

United States
Circuit Court of Appeals
For the Ninth Circuit.

EDWARD H. CHAVELLE, as Trustee in Bankruptcy of WASHINGTON STEEL & BOLT COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WASHINGTON TRUST COMPANY, a Corporation,

Appellee,

and

WASHINGTON TRUST COMPANY, a Corporation,

Appellant,

vs.

WASHINGTON STEEL & BOLT COMPANY, a Corporation Bankrupt and EDWARD H. CHAVELLE, as Trustee in Bankruptcy of WASHINGTON STEEL & BOLT COMPANY a Corporation, Bankrupt,

Appellees.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation, Bankrupt.

Transcript of Record.

Upon Appeals from the United States District Court for the Western District of Washington, Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Counsel.

JAMES B. MURPHY, Esquire, Attorney for Appellant and Appellee, Washington Trust Company, 911 Lowman Building, Seattle, Washington.

J. W. RUSSELL, Attorney for Appellee and Appellant, Trustee in Bankruptcy, 714 Lowman Building, Seattle, Washington. [1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

Order Appointing Receiver.

Upon the annexed petition of Standard Oil Company, Seattle Hardware Co. and Cataract Refining Mfg. Co. verified the 16th day of September, 1911, and the petition in bankruptcy filed herein against the above-named bankrupt, in the office of the Clerk of this Court on the 16th day of September, 1911, and upon the bond of your petitioner duly filed and approved herewith, and it appearing that a subpoena has been duly issued against said alleged bankrupt as required by law, and that the appointment of a receiver is absolutely necessary for the preservation of this estate, now on motion of attorney for the petitioning creditors herein,

*Page-number appearing at foot of page of original certified Record.

IT IS ORDERED:

That Edward H. Chavelle, Esq., be and he hereby is appointed temporary receiver of the property, assets and effects of the above alleged bankrupt, with all the usual rights and powers thereof until the further order of this court, in the premises,

And it is further ordered:

That the said receiver give a bond to the people of the United States in the sum of Five Thousand Dollars conditioned for the faithful discharge of his duties as such receiver, and

It is further ordered:

That the said alleged bankrupt forthwith deliver to the said receiver all of its property, assets and effects now in its possession and under its control, and the said alleged bankrupt [2] and all other persons, firms, corporations, all creditors of the said alleged bankrupt, as well as its attorneys, agents and servants and all sheriffs, marshals and other officers, deputies and their employees, are hereby jointly and severally restrained and enjoined from removing, transferring or otherwise interfering with the property, assets and effects of the above-named alleged bankrupt, and from prosecuting, executing or suing out of any court any process, attachment, replevin or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of the above-named alleged bankrupt, and from molesting, disturbing or interfering with the receiver herein appointed in the discharge of his duties.

C. H. HANFORD,
District Judge.

[Endorsed]: Order Appointing Receiver. Filed in the U. S. District Court, Western Dist. of Washington. Sep. 18, 1911. F. A. Simpkins, Acting Clerk. [3]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,
Alleged Bankrupt.

Order of Adjudication.

At Seattle, in the said District, on the 16th day of September, 1911, before the Honorable C. H. Hanford, Judge of the said Court in Bankruptcy.

The petition of Standard Oil Company, a corporation of Seattle, King County, Washington, Seattle Hardware Company, a corporation of Seattle, King County, Washington and Cataract Refining & Manufacturing Company, a corporation of Buffalo, Erie County, New York, that the Washington Steel & Bolt Company, a corporation be adjudged a bankrupt within the true intend and meaning of the Acts of Congress relating to Bankruptcy, having been heard and duly considered, the said Washington Steel & Bolt Company, a corporation, is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable C. H. Hanford, Judge of the said Court and the seal thereof, at Seattle, in said

district on the 19th day of September, 1911.

[Seal]

F. A. SIMPKINS,
Acting Clerk.

Enter: C. H. Hanford,
Judge.

[Endorsed]: Order of Adjudication. Filed in the
U. S. District Court, Western Dist. of Washington.
Sep. 19, 1911. F. A. Simpkins, Acting Clerk. [4]

**[Order of Referee Approving Election of Trustee,
etc.].**

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 4717—IN BANKRUPTCY.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

This being the day appointed for the first meet-
ing of creditors of which due notice has been given,
the undersigned Referee of the said Court in Bank-
ruptcy, sat, pursuant to such notice, to take the proof
of debts and for the choice of trustee under the said
bankruptcy and he does hereby certify:

That the creditors whose claims had been duly
proven and were present or duly represented unani-
mously elected Edward H. Chavelle, of Seattle in
said district, as trustee of said bankrupt's estate and
fixed the penalty of his bond in the sum of \$1000.00,
which action was and is approved and this order made
and filed accordingly.

Dated at Seattle, in said district, this 26th day of March, 1912.

JOHN P. HOYT,
Referee in Bankruptcy.

[Endorsed]: Appointment of Trustee. Filed March 26th, 1912, 3 P. M. John P. Hoyt, Referee. Filed in the United States District Court, Western District of Washington. Dec. 8, 1914. Frank L. Crosby, Clerk. By B. E. Simpkins, Deputy. [5]

**[Petition of The Washington Trust Company to
Foreclose Mortgage.]**

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. ——. IN BANKRUPTCY.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Comes now The Washington Trust Company, a corporation, and shows this court:

1. That said The Washington Trust Company is a corporation organized under the laws of the State of Washington.

2. That on the first day of September, 1908, said bankrupt, Washington Steel & Bolt Company, a corporation, made, executed and delivered to the undersigned its first mortgage coupon bonds to the amount of Two Hundred Thousand (\$200,000.00) Dollars, and on the same date and simultaneously therewith, made, executed and delivered to said The Washing-

ton Trust Company its mortgage trust deed, upon all of its property, both real and personal, and all property which it should thereafter own, both real and personal, including the personal property which the trustee herein is seeking to obtain an order authorizing him to sell, which said mortgage trust deed was duly acknowledged so as to entitle the same to be recorded, and was thereafter duly filed and recorded in the auditor's office of Snohomish County, State of Washington, in Volume Sixty-nine (69) of Mortgages, at page Three Hundred Eighty-eight (388).
[6]

3. That thereafter and prior to the time that said Washington Steel & Bolt Company became insolvent there was certified by said The Washington Trust Company and negotiated by said Washington Steel & Bolt Company \$53,100.00 of said bonds.

4. That the Bank of Montreal, a banking corporation, doing business at Spokane, Washington, is the owner and holder of \$47,900.00 par value of said bonds so issued and negotiated.

5. That said bonds provide for the payment of interest thereon at the rate of eight per cent per annum, payable semi-annually on the first days of March and September in each year; that said mortgage trust deed provided that in case default should be made by said Washington Steel & Bolt Company in the payment of the semi-annual interest on any of the bonds issued under this indenture, according to the tenor of the coupons annexed thereto as they severally became due, and if such interest shall remain unpaid, or in arrears for a period of six months, that

then and thereupon in every such case it shall be the duty of the trustee, upon a requisition in writing, signed by the holders of not less than one-third in amount of said bonds then outstanding, and being furnished with adequate security and indemnity against all costs, expenses and liabilities to be by it incurred, to proceed to enforce the rights of the bondholders under said trust deed, either by a suit or suits in equity or at law, in aid of the execution of such powers or otherwise as the trustee being advised by counsel shall deem most effectually to enforce such rights.

6. That the interest on said bonds held and owned by said Bank of Montreal as aforesaid has not been paid, and has not been due for more than six months prior to February 19, 1912. That the interest which became due on said bonds on March 1, 1912, has not been paid. [7]

7. That on February 19, 1912, the Bank of Montreal executed and delivered to your petitioner a written guarantee of indemnity against all costs, expenses and liabilities to be incurred by it in proceeding to enforce the right of said bondholders, and in writing requested and required your petitioner to proceed immediately to foreclose said mortgage deed of trust, and to enforce the rights of the bondholders under said indenture, according to the terms and provisions thereof.

8. That your petitioner has elected to proceed to foreclose said mortgage trust deed in a court of equity, in accordance with the terms and provisions thereof.

9. That the property included in said mortgage, both real and personal, is that tract or parcel of land with the buildings thereon erected, and all machinery connected with or attached to said buildings and property situated in the town of Edmunds, County of Snohomish, and State of Washington, together with all and singular the tenements, hereditaments and appurtenances belonging to said property, and the reversion, remainders, tolls, income, rent, issues, and profits thereof, including all chattels, fixtures, furnishings, machinery, tools, and every other estate, right, title and interest, property and appurtenances of said Washington Steel & Bolt Company, including the personal property for which trustee in bankruptcy herein is now seeking an order authorizing him to sell.

10. That the value of said property, all property of said bankrupt, both real and personal does not exceed the sum of \$————, and in the opinion of your petitioner said property will not sell for enough to satisfy said mortgage indebtedness.

WHEREFORE said The Washington Trust Company prays that it be granted an order by this Court authorizing and empowering [8] it to foreclose its said mortgage upon the real estate and personal property belonging to said bankrupt.

MURPHY, WALL and DANSON,

WILLIAMS and DANSON,

Attorneys for the Washington Trust Company.

State of Washington,

County of Spokane,—ss.

J. GRIER LONG, being first duly sworn, upon

oath deposes and says: That affiant is president of The Washington Trust Company above named, that he has read the foregoing petition, knows the contents therein contained, and that the same are true as he verily believes.

J. GRIER LONG.

Subscribed and sworn to before me this 30th day of July, 1912.

[Seal]

R. J. DANSON,

Notary Public for Washington, Residing at Spokane.

[Indorsed]: Petition: Filed August 14, 1912, 3 P. M.

JOHN P. HOYT,

Referee.

Filed in the U. S. District Court, for Western District of Washington. Dec. 30, 1912. Frank L. Crosby, Clerk. [9]

**[Answer of Trustee to Petition to Foreclose
Mortgage.]**

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

The trustee of Washington Steel & Bolt Company, a corporation, the bankrupt above named, an-

swering the answer and petition of The Washington Trust Company herein.

I.

Admits the allegations of paragraph I thereof.

II.

Denies, upon information and belief, the making, execution and delivery of the \$200,000.00 of bonds, or any part thereof, as alleged in paragraph II thereof.

III.

Admits that on the 1st day of September, 1908, the Washington Steel & Bolt Company made, executed and delivered what purported to be a mortgage upon certain real and personal property therein described, and purporting to cover any and all real and personal property thereafter acquired by it, and that such purported mortgage was recorded in Snohomish County, Washington, in Volume 69 of Mortgages, at page 388, as alleged in paragraph II thereof.

IV.

Denies each and every allegation of said paragraph II, except as hereinbefore expressly admitted or denied.

V.

Denies each and every allegation contained in paragraphs III and IV thereof.

VI.

Admits that certain bonds prepared by the Washington Steel & Bolt Company purported to bear interest at the rate of 8%, payable semi-annually [10] as alleged in paragraph V thereof.

VII.

Denies each and every other allegation contained

in said paragraph V thereof.

VIII.

Denies that he has any knowledge, or information sufficient to form a belief, as to the allegations contained in paragraphs VI, VII, and VIII thereof.

IX.

Denies each and every allegation contained in paragraph IX and X thereof.

X.

Admits the allegations of paragraph XI thereof.

And the trustee, further answering said answer and petition, and as affirmative matter, alleges:

I.

That no bonds were ever regularly issued by the Washington Steel & Bolt Company, as provided in and by the terms of said purported mortgage, and that all bonds purporting to be issued by said Washington Steel & Bolt Company thereunder were and are void.

II.

That in so far as said purported mortgage purported to embrace the personal property therein described, it permitted the mortgagor therein to sell and dispose of said personal property for its own benefit and was and is, by reason thereof, fraudulent and void.

III.

That by reason of there being no valid outstanding bonds secured thereby, said purported mortgage is a nullity.

Wherefore, the trustee prays for a decree herein decreeing that said purported mortgage is fraudulent

and void as to the personal property therein mentioned; that it is void as to future-acquired property, both real and personal; that all bonds purporting to have been issued [11] by the Washington Steel & Bolt Company pursuant to the provisions of said purported mortgage were and are void, and directing the same to be surrendered and cancelled; that said purported mortgage be decreed to be of no force and effect, and that the same be cancelled of record; and that the trustee have such other, further or different relief as shall be deemed meet and equitable.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

State of Washington,

County of King,—ss.

Edward H. Chavelle, being duly sworn, deposes and says that he is the Trustee in Bankruptcy herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

EDWARD H. CHAVELLE.

Subscribed and sworn to before me this 15th day of April, A. D. 1913.

[N. S.]

O. L. WILLITT,

Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of a copy of the within answer and due service thereof, is admitted this — day of April, 1913.

JAS. B. MURPHY. (E. K.)

DANSON, WILLIAMS & DANSON.

(E. K.)

Attorneys for Petitioner.

[Endorsed]: Answer of Trustee to Answer and Petition of the Washington Trust Company. Filed April 25th, 1913. 2 P. M. John P. Hoyt, Referee. Filed in the United States District Court, Western District of Washington, Jul. 9, 1913. Frank L. Crosby, Clerk. By ———, Deputy. [12]

*In the District Court for the State of Washington,
Northern Division.*

No. 4717.

In the Matter of the WASHINGTON STEEL AND
BOLT COMPANY, a Corporation,
Bankrupt.

**Reply [to Answer of Trustee to Petition to Foreclose
Mortgage].**

Comes now the Washington Trust Company and for reply to the answer of the Trustee of the Washington Steel & Bolt Company, a Corporation, denies and says as follows:

I.

Referring to the first paragraph of the further affirmative answer, it denies each and every allegation therein contained.

II.

Referring to paragraph II of the affirmative matter set out in said answer, it denies each and every allegation therein contained.

III.

Referring to paragraph III of said affirmative matter, it denies each and every allegation therein contained.

WHEREFORE, Having fully replied to said affirmative matter, the Washington Trust Company prays as it has heretofore prayed in its petition herein.

JAMES B. MURPHY,
Attorney for Washington Trust Company.

State of Washington,
County of King,—ss.

James B. Murphy, being first duly sworn, upon oath deposes and says: That he is attorney for the petitioner herein, the Washington Trust Company; that he has heard the foregoing reply read, knows the contents thereof and believes the same to be true; that he makes this affidavit for and on behalf of this petitioner because it is a corporation and has no officer in King County, State of Washington, to verify a pleading. [13]

JAMES B. MURPHY,

Sworn and subscribed to before me this 21st day of April, 1913.

ROBERT BOOTH,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within Reply received and due service of same acknowledged this 21st day of April, 1913.

J. W. RUSSELL,
Attorney for Trustee of Wash. Steel & Bolt Co.
[Endorsed]: Reply. Filed April 25th, 1913, 2 P.
M. John P. Hoyt, Referee.

[Endorsed]: Filed in the United States District Court, Western District of Washington, July 9, 1913.
Frank L. Crosby. By Deputy. [14]

**[Opinion of Referee Filed November 26, 1912, on
Petition to Foreclose Mortgage, etc.]**

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 4717.—IN BANKRUPTCY.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY, a Corporation,
Bankrupt.

MEMORANDUM OF DECISION.

The petitioner, the Washington Trust Company, seeks leave to foreclose its mortgage outside the bankruptcy proceeding, and in the opinion of the undersigned is entitled to such leave if, in view of the principles of equity, it can do so without injury to the rights of other interested parties. The facts show that soon after adjudication the bankruptcy court, by its proper officers took possession of all the assets belonging to said bankrupt estate, practically the whole of which is claimed by the mortgagee to be covered by its mortgage. The property so taken possession of was of such a nature that it required attention to preserve it. The possession so taken has remained in the Bankruptcy Court to this day, and for many months after possession was taken no question was made or objection raised on the part of the mortgagee or any other person interested to the retention of such possession by the officers of the Bankruptcy Court, and no demand whatever was made by or in behalf of said mortgagee to secure possession of the property or the right to control the

same until the filing of its petition herein, asking for leave to foreclose as hereinbefore stated. During all this time the safety of the property in question required the services of a watchman, the expenditure of money for light and water required in the care of the property and the attention of the receiver and the trustee in looking after the same and seeing to it that, so far as the assets in his hands would allow, the property was properly watched and cared for. Under these circumstances the undersigned is of the opinion that equity requires that the mortgagee, before being allowed to foreclose its mortgage outside of the bankruptcy proceeding or take possession of the property, should be required to pay the reasonable expenses incurred in so caring for the property, by or in behalf of the receiver or trustee. The services so required, if reasonably compensated for, will amount to [15] a large sum and it is unfortunate for all concerned that circumstances have seemed to make it necessary for the property to have been retained in the possession of the Bankruptcy Court so long as it has. However, so far as the undersigned is advised, no fault can be charged to the receiver or trustee on account of such delay. In the opinion of the said undersigned the mortgagee should be required to assert its rights in the Bankruptcy Court and pay such a proportion of the expenses incident to the care of the property and the supervision thereof as may be found to be equitable or, if it desires to proceed to foreclose the mortgage outside the bankruptcy proceeding it should pay into the hands of the trustee for disbursement to those

interested a fair compensation under all the circumstances for the services of the watchman and others in looking after the property, the water and light bills which have been incurred, and some compensation to the receiver and to the trustee for supervising those engaged in the care of the property. As to what amount should be required to be paid is a difficult matter to determine. The property was so situated that it was difficult to provide for its care and the receiver and the trustee have been at a disadvantage in providing for such care by reason of the fact that neither of them had any funds in his hands with which to insure those employed proper compensation. The liabilities incurred, if estimated at the price agreed to be paid by the receiver or trustee, would amount to at least \$1400.00, and the receiver and trustee should be allowed at least \$200.00 for looking after the matter and after reducing these claims to the minimum they will amount to at least \$1200. The prayer of the petitioner will be granted upon condition that he pays to the trustee for the benefit of the estate the sum of Twelve Hundred Dollars (\$1200). Otherwise, said petition will be denied. It was suggested upon argument that the Referee indicate what expenses would be charged against the mortgagee in the bankruptcy proceeding if it elected to remain therein and have its mortgage there foreclosed. The Referee finds it impossible to announce beforehand what equity will require for the reason that the facts upon which the adjustment must be made cannot now be determined. All that can properly be stated at this time is that the general

expenses of administration will not be charged [16] against the mortgagee but only its proportion of the necessary expenditures for the care of the property and the costs and expenses incident to the sale thereof.

An order may be prepared and submitted in accordance with the foregoing.

Dated at Seattle, in said District, this 26 day of November, 1912.

JOHN R. HOYT,
Referee in Bankruptcy.

[Endorsed]: Memorandum of Decision. Filed Nov. 26th, 1912, 3 P. M. John P. Hoyt, Referee. Filed in the United States District Court, Western District of Washington. Dec. 30, 1912. Frank L. Crosby, Clerk. [17]

**[Order of Referee Re Petition of Washington Trust
Co. to Foreclose Mortgage.]**

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY,

Bankrupt.

PETITION.

This cause coming on to be heard upon the petition of the Washington Trust Company for leave to foreclose its mortgage outside the bankruptcy proceeding, and the Referee being fully advised in the prem-

ises, delivered a written opinion herein on the 26th day of November, 1912, and in pursuance of said written opinion, it is considered:

I. ORDERED AND DECREED by the Referee that the prayer of the petitioner be granted upon the condition that it pay to the Trustee for the benefit of said estate the sum of Twelve Hundred Dollars (\$1200); otherwise said petition will be denied, and it is further

II. ORDERED AND DECREED That the said Washington Trust Company pay to Edward H. Chavelle, Trustee in Bankruptcy, for the benefit of said bankrupt estate the sum of twelve hundred dollars (\$1200) on or before the 26th day of December, 1912, and in the event that said sum is not paid, then and in that event the petition of the Washington Trust Company to foreclose its mortgage outside the bankruptcy proceeding is hereby denied. That the Washington Trust Company hereby excepts to Paragraph I and II of this order and to the whole and every part of each of said paragraphs, and its exception hereby allowed.

Dated at Seattle in said State and District this 19th day of December, 1912.

JOHN P. HOYT,
Referee in Bankruptcy. [18]

[Indorsed]: Order as to payment of certain expenses, etc. Filed the 19th day of December, 1912, 11 A. M. John P. Hoyt, Referee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Dec. 30, 1912. Frank L. Crosby, Clerk. By Deputy. [19]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY,

Bankrupt.

**Petition [for Review of Order of Referee of
December 19, 1912, etc.].**

PETITION.

To the Honorable John P. Hoyt, Esq., Referee in
Bankruptcy:

Your petitioner, the Washington Trust Company
respectfully shows as follows:

I.

That it is a corporation duly organized under the
laws of the state of Washington and that it has
paid all license fees required of it and especially the
last license fee required of it by the State of Wash-
ington.

II.

That heretofore it filed its petition herein asking
leave to foreclose its mortgage in the District Court
of the United States for the Western District of
Washington, Northern Division, which petition is
hereby referred to and your petitioner asks that it
be read in connection with this petition.

III.

That a hearing was had upon said petition and
thereafter, to wit, on the 26th day of November, 1912,

the Referee rendered a memoranda decision upon said petition and thereafter a formal order was entered on the 19th day of December, 1912, requiring the petitioner to pay to the Trustee of the above-entitled bankrupt the sum of Twelve Hundred (\$1200.00) Dollars as a condition precedent to his right to foreclose his mortgage in said District [20] Court, which memoranda decision and order is hereby referred to to save repetition.

IV.

That your petitioner feels itself aggrieved by the said order and desires the correctness of said order reviewed by the Judge of the District Court of the United States for the Western District of Washington, Northern Division, and your petitioner contends that the said order is erroneous and that the Court committed error in the following particulars:

(a) That the Court erred in finding that the Washington Trust Company made no objection and raised no question as to the retention of said property until the filing of its petition herein asking for leave to foreclose the mortgage, it being the contention of your petitioner that the proofs offered showed that immediately upon the appointment of a Trustee, it concerned itself regarding the property and was awaiting and abiding the pleasure of the Receiver and Trustee and giving the Receiver and Trustee an opportunity to carry out some plan regarding the property which would inure to the benefit of the general creditors.

(b) That the Court erred in the opinion that equity required your petitioner under all circumstances be-

fore being allowed to foreclose its mortgage outside of the bankruptcy proceedings or take possession of the property, to pay the reasonable expense incurred in caring for the property by or in behalf of the receiver or trustee.

(c) The Court erred in the opinion that your petitioner should be required to assert its rights in the bankruptcy court and pay such proportion of the expenses incident to the care of the property and the supervision thereof as may be found equitable and pay into the hands of the trustee for disbursement fair compensation [21] for a watchman to watch the property described in the said mortgage or compensation for supervision of the same, it being the contention of your petitioner that the trustee in taking charge of the said property stepped into position of the mortgagor and that whatever he may have done in connection with the said property, must necessarily have been done to protect any equity that he may have believed that the trustee or receiver possessed in favor of general creditors and that he was at no time authorized or justified in expending or laying out money upon said property for the use and benefit of the mortgagee, this petitioner.

(d) The Court erred in holding that liabilities incurred in connection with the keeping of the said property amounted to \$1400.00 and erred in holding that the trustee be allowed \$200.00 for looking after the matter and erred in holding that \$1200.00 was the minimum which should be allowed for the above items and in granting the prayer of the petitioner upon condition that the trustee pay for the benefit

of the estate the sum of Twelve Hundred (\$1200.00), it being the contention of the petitioner that the said items are improperly charged against the property and made a prior claim to said mortgage.

(e) The Court erred in rendering order on December 19th, 1912, granting the prayer of your petitioner upon the payment of Twelve Hundred (\$1200.00) Dollars and further ordering that if said sum is not paid, the petition will be denied and the Court further erred in ordering that your petitioner pay to Edward H. Chavelle, trustee in bankruptcy, the sum of Twelve Hundred (\$1200.00) Dollars on or before the 26th day of December, 1912; and in further providing that if the said sum is not paid the petition for the foreclosure of the mortgage would be denied; it being the contention of your petitioner that the trustee should have abandoned [22] the property to the mortgagee when it was ascertained that it was not sufficient to pay the mortgage debt and that the rights of the trustee were no greater than the rights of the mortgagor and that in no event should there be any costs or charges imposed upon the said property as against the said mortgage which would exceed the ordinary costs in a foreclosure case in the said court providing the mortgage be foreclosed in said bankruptcy proceedings or sold by the trustee, it being the contention of your petitioner that the court should under the circumstances have ordered the trustee to have abandoned the property to the mortgagee, your petitioner in the event that it desired to foreclose its mortgage outside of the bankruptcy proceedings and if it fore-

closed its mortgage in the bankruptcy proceedings, then to be subject only to the ordinary disbursements incident to a foreclosure in a suit in a court of equity.

WHEREFORE, Your petitioner respectfully prays that the usual record of the proceedings had pursuant to said petition, including the petition and all its exhibits and the transcript of the testimony taken down and used in connection therewith and the final order entered therein on December 19th, 1912, to be certified for review to the District Court of the United States for the Western District of Washington, Northern Division.

JAMES B. MURPHY,
Attorney for Petitioner.

United States of America,
District of Washington,—ss.

I, James B. Murphy, attorney for petitioner mentioned and described in the foregoing petition, do make solemn oath and state that the foregoing petition is true according to the best knowledge, information and belief of affiant and further certifies that he believes that the petition in his opinion is well founded in points [23] of law and that it is not interposed for delay.

JAMES B. MURPHY.

Subscribed and sworn to before me this 27th day of December, 1912.

[Seal] H. A. OWEN, Jr.,
Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

[Indorsed]: Petition. Filed Dec. 28th, 1912,
11 a. m. John P. Hoyt, Referee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Dec. 30, 1912. Frank L. Crosby, Clerk. By _____, Deputy. [24]

**[Opinion, Filed February 7, 1913, Affirming Opinion
of Referee Denying Petition to Foreclose Mort-
gage, etc.]**

*United States District Court, Western District of
Washington, Northern Division.*

No. 4717.

Filed Feb. 7, 1913.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

JAMES B. MURPHY, for Petitioner.

EDWARD H. CHAVELLE, Trustee.

(By the Court.)

The Washington Steel & Bolt Company has heretofore been adjudged a bankrupt in this Court. At the time of the adjudication the greater part of the property and assets of the bankrupt was subject to a mortgage in favor of the Washington Trust Company, to secure certain bonded indebtedness. The validity of this mortgage is admitted in part, but there is a dispute between the trustee in bankruptcy and the mortgagee as to the property actually covered by the mortgage, and also as to the validity of the mortgage as to certain personal property included therein, because the mortgage was not filed

or recorded as a chattel mortgage, as required by the local laws of the State. The mortgagee has petitioned the Court for leave to foreclose its mortgage outside of the bankruptcy court and the referee has granted such leave only upon condition that the mortgagee first pay to the trustee the sum of \$1,200.00, to cover the expenses of the trustee in looking after and conserving the mortgaged property while in his custody as receiver and trustee of the bankruptcy court. The mortgagee objected to the condition [25] imposed, and the case is now here on a petition to review the referee's decision.

Under the provisions of the bankruptcy act, the trustee in bankruptcy is vested with no better right or title to the property of the bankrupt than belonged to the bankrupt himself at the time of the adjudication. He takes mortgaged property subject to the lien of the mortgage and is only concerned with, or interested in, the equity of redemption, provided the validity of the mortgage itself is not questioned. If the equity of redemption is of any value it should be administered for the benefit of the general creditors and at their expense, but if of no value the trustee should not concern himself or incur any expense in connection therewith. The lien of a mortgage cannot be displaced by charges such as are here made, unless the expenses are incurred with the consent of the lien holder, or unless the lienholder has estopped himself by his conduct from objecting thereto. These principles are elementary and the Court does not deem it necessary at this time to determine whether there was such consent or estoppel, as

these questions may not arise again. There is, in the opinion of the Court, other valid reasons why leave to foreclose should not be granted at this time. As already stated, there is a dispute as to the property actually covered by the mortgage and as to the validity of the mortgage of the personal property, and these disputes should be settled and determined in the bankruptcy court. They can be settled here more speedily and at less expense to the parties than in any other forum, and it is the general policy of the law to discourage useless and unnecessary litigation. Either party may apply to the court or referee on the pleadings already filed, for a determination of all questions relating to the scope and validity [26] of the mortgage, and when these questions are determined, the trustee must elect whether he will administer the equity of redemption for the benefit of the general creditors, or surrender the mortgaged property to the mortgagee for foreclosure. If he elects to administer the equity of redemption he must do so at the expense of the general creditors and in such a manner as not to unduly hamper or delay the mortgagee in the collection of its debt. When these questions are settled the court will determine, if need be, the validity of the expense charges made against the mortgagee. We do not understand that the referee decided that these charges are legal obligations against the mortgagee, but if so, that part of his decision will not be controlling upon the Court should the questions arise at some later stage of the proceedings. In so far as the decision of the referee denied leave to the mortgagee to foreclose at this

time, the order is affirmed, but without prejudice to the right to renew the application at a later day under changed conditions.

[Indorsed]: Memorandum Decision. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 7, 1913. Frank L. Crosby, Clerk. By B. O. Wright, Deputy. [27]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Order [Denying Petition for Leave to Foreclose
Mortgage, etc.].**

BE T REMEMBERED, that this matter came on duly and regularly for hearing upon the petition for a review from the decision of the Honorable John P. Hoyt, Referee in Bankruptcy, and after argument of counsel, the matter was submitted to the Court for its consideration and determination, and the Court heretofore, to wit, on the 7th day of February, 1913, after having duly considered the said cause, filed a memoranda decision herein;

Now, therefore, it is hereby ordered that the petition of the Washington Trust Company for leave to foreclose its mortgage against the property and assets of the bankrupt outside of the bankruptcy court be and the same is hereby denied at this time, but

without prejudice to the right to renew the application at a later date under changed conditions.

And, it is hereby further ordered that this proceeding be and the same hereby is referred back to the referee, to proceed in accordance with the memoranda decision on file herein, and said referee is hereby directed, upon the application of either party, to determine all questions relative to the scope and validity of said mortgage, and of the bonds secured thereby, under the pleadings already filed herein, and as the same have been heretofore or may be hereafter amended, and when these questions are settled the referee will determine, if need be, the validity of the expense charge made against the mortgage.

And, it is hereby further ordered that when such questions have been determined, the trustee must elect whether he will administer [28] the equity of redemption for the benefit of the general creditors, provided said mortgage and bonds are held valid, or surrender the mortgaged property to the mortgagee for foreclosure.

Done in open court, this 3d day of March, 1913.

O. K. Murphy.

CLINTON W. HOWARD,

Judge.

Service of the within Order by delivery of a copy to the undersigned is hereby acknowledged this 3d day of Mar., 1913.

JAMES B. MURPHY.

[Indorsed]: Order. Filed in the United States District Court, Western District of Washington,

Mar. 3, 1913. Frank L. Crosby, Clerk. By B. O. Wright, Deputy. [29]

[Opinion of Referee, Filed May 15, 1913.]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.—IN BANKRUPTCY.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

MEMORANDUM OF DECISION.

It is contended on the part of the Trustee that the mortgage in question and the bonds sought to be secured thereby are void by reason of the fact that the statutes of the State, in force at the time of the execution of the mortgage, did not authorize such private corporations to issue bonds like those here involved and secure the same by a mortgage on its property. Without expressing any opinion as to the merits of this contention the Referee for the purposes of this decision will assume that the law authorized the issue of such bonds and the mortgaging of property to secure the same. Has the evidence introduced upon the hearing shown such action on the part of the bankrupt corporation in the execution of such mortgage, and of the issue of bonds secured thereby as to require the Court to give them force? The Referee has doubts as to whether or not authority for the execution of the mortgage by the officers who executed it has been sufficiently shown.

The certified copy of the mortgage offered in evidence furnished no higher proof of the regularity of its execution than would the original mortgage had it been put in evidence. Either the certified copy or the original mortgage was sufficient to establish the fact that the mortgage was executed by the officers as shown upon its face, and the admission of this fact is all that the Referee is able to find in the answer of the Trustee. But it may well be doubted whether the fact that the officers executed the paper is sufficient to show that they had been authorized so to execute it by proper [30] action on the part of the Board of Trustees of the corporation. The presumption of authority, if any, which flowed from the fact of the execution was in no way aided by any evidence introduced upon the hearing. The Referee finds it unnecessary to decide this question for the reason that he is satisfied that under the special Order of Reference under which he is acting it was his duty to determine not only the legality of the execution of the mortgage as such, but also whether or not the bonds had been so issued as to bring them within the terms of the mortgage and make it a security for their payment. If no bonds had ever been issued to be secured by the mortgage, then the mortgage after the bankruptcy of the corporation would cease to be of any force whatever. Therefore to determine whether or not it is effective as a lien upon the property in the hands of the Trustee it is necessary to decide as to the legality of the issue of the bonds which have been sought to be

issued and under the terms of the mortgage to be secured thereby.

In the opinion of the Referee the evidence offered upon the hearing was not sufficient to show that any of these bonds had ever been regularly issued under the terms of the mortgage. The only evidence tending to show that any bonds had been issued was to the effect that \$20,000.00 of them had been delivered to the President of the corporation in payment of a pre-existing debt owing to him by the corporation, and that between \$20,000.00 and \$30,000.00 more had been issued to the Bank of Montreal as collateral security for a pre-existing debt owing to the bank by the corporation. No resolution of the Board of Directors authorizing the issuance and negotiation of these bonds for the purposes for which they were issued was in any manner shown either by the records of the corporation, or by oral evidence. This being so, the Referee is compelled to hold that authority for the issue and negotiation of the bonds as above stated was not shown. To hold that the President of the corporation could [31] without authority from the Board of Directors take the bonds of the Company as his own for a debt already existing would be equivalent to allowing him without being authorized so to do to convert his unsecured claim into a secured one. And to hold that any officer of the bankrupt could negotiate the bonds for the purposes of collateral security without express authority would in the opinion of the Referee contravene an elementary rule as to the powers of the officers of a corporation. It follows that in the opinion of the

Referee the validity of the mortgage has not been established. Findings and conclusions as herein suggested may be prepared and submitted.

Dated at Seattle, in said District, this 15th day of May, 1913.

JOHN P. HOYT,
Referee in Bankruptcy.

[Indorsed]: Memorandum of Decision. Filed May 15th, 1913. 1 P. M. John P. Hoyt, Referee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, July 9, 1913. Frank L. Crosby, Clerk. By Deputy. [32]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4717—IN BANKRUPTCY.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Order Denying Petition for Leave to Foreclose.

The Washington Trust Company, a corporation, having filed its petition herein for leave to foreclose an alleged mortgage executed by the bankrupt; and the Trustee in Bankruptcy having filed his answer to said petition; and the Referee in Bankruptcy having made an order allowing said The Washington Trust Company leave to foreclose its said alleged mortgage upon condition, as specified in said order, which said order was made by the Referee in Bank-

ruptcy without passing upon the validity of either said alleged mortgage or the bonds issued thereunder; and said petitioner having taken said order to the District Court for review; and the said District Court having referred the matter back to the Referee in Bankruptcy for the purpose of having the validity of said alleged mortgage and of the said bonds determined upon the pleadings as they then existed or might be thereafter amended; and the Trustee in Bankruptcy having duly filed an amended answer to said petition; and the petitioner having replied thereto; and the issues raised by said petition, amended answer, and reply having been brought on for hearing before the Referee in Bankruptcy on the 25th day of April, 1913; and the Referee in Bankruptcy having heard the proofs and allegations of the parties; and the Referee in Bankruptcy having duly made and filed his memorandum of decision herein; Now, on motion of J. W. Russell, attorney for the Trustee in Bankruptcy herein; [33]

IT IS ORDERED that the petition of the said The Washington Trust Company be, and the same hereby is denied, upon the ground and for the reason that said purported mortgage and the outstanding bonds purporting to be issued thereunder are, and each of them is, null, void, and of no effect.

JOHN P. HOYT,

Referee in Bankruptcy.

To all of which petitioners except and its exception is allowed.

JOHN P. HOYT,

Referee.

Receipt of a copy and due service hereof admitted this 20th day of May 1913.

J. B. MURPHY,
Attorney for Petitioner.

[Indorsed]: Order Denying Petition for Leave to Foreclose. Filed June 16, 1913. 10 P. M. John P. Hoyt, Referee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, July 9, 1913. Frank L. Crosby, Clerk. By Deputy. [34]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY, a Corporation,
Bankrupt.

**Petition for Review [of Opinion Filed May 15, 1913,
and Order of June 17, 1913, etc.].**

To the Honorable JOHN P. HOYT, Referee in Bankruptcy:

Your petitioner, the Washington Trust Company, feeling itself aggrieved by the opinion rendered herein on May 15, 1913, denying its petition for leave to foreclose its mortgage, and by orders entered on June 17, 1913, denying petitioner's motion for a new trial and adjudging the mortgage of the Washington Trust Company null and void, hereby petitions for a review of said matter by the above-entitled court

and the Judge thereof, and as grounds for said review your petitioner represents as follows:

(1) That a hearing was had upon said petition and thereafter, on the 15th day of May, 1913, the Referee rendered a memoranda decision upon said petition, and that thereafter a motion for a new trial was made, supported by certain affidavits, and a hearing had upon the said motion for a new trial or re-hearing, and that thereafter, on the 17th day of June, 1913, a formal order was entered by said Referee denying the motion for a new trial and adjudging the mortgage referred to in the petition of the Washington Trust Company as null and void and of no effect, and denying the petition of the Washington Trust Company for leave to foreclose its said mortgage, to which and all of which your petitioner duly reserved and preserved an exception. [35]

(2) That your petitioner feels itself aggrieved by said order and desires the correctness thereof, and of each of said orders, and opinions, reviewed by the Judge of the District Court of the United States for the Western District of Washington, Northern Division, and your petitioner contends that the said decision and orders are erroneous and that the Referee permitted error in the following particulars:

(a) That the Court erred in holding that it was necessary to show authority and that no authority was shown for the execution and delivery of the said mortgage, it being the contention of this petitioner that the allegations as to the execution of the mortgage and bonds were admitted, and that the regu-

larity of the execution of the mortgage and bonds (so far as the formal execution and delivery thereof was concerned), and the proceedings leading up thereto was unquestioned and conceded upon the trial of said cause and the argument thereof.

(b) That the Referee erred in finding that the bonds were not duly and regularly issued for value.

(c) That the Referee erred in failing to find that the said mortgage and bonds, and especially the bonds, had passed into the hands of innocent parties for value.

(d) That the Referee erred in his refusal to grant a new trial and a rehearing of said matter, and in refusing to give petitioner an opportunity of supplementing the testimony already in.

(e) That the Referee erred in entering an order adjudging and decreeing the said mortgage and bonds null and void, the contention of the petitioner being that there was testimony sufficient to make a *prima facie* case showing that the mortgage and bonds were valid and binding, and, furthermore, that there was no testimony tending to show that the mortgage was void; the most that could be said, in any event, was that there was a failure of proof, and no [36] affirmative showing of the invalidity of the mortgage.

(f) The Referee erred in denying the prayer of the petition of the said Washington Trust Company;

Wherefore, your petitioner respectfully prays that the usual record of the proceedings had pursuant to said petition, including said petition, all exhibits and a transcript of the testimony taken down and used in

connection therewith, and the final orders entered herein on June 17, 1913, be certified for review to the United States District Court for the Western District of Washington, Northern Division, for such proceedings as the Court may deem proper.

JAMES B. MURPHY,
Attorney for the Washington Trust Company. [37]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of the Washington STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

[**Affidavit of James B. Murphy Re Petition for
Review, etc.**]

State of Washington,
County of King,—ss.

I, James B. Murphy, Attorney for the Petitioner mentioned and described in the foregoing petition, do make solemn oath and state that the foregoing petition is true according to the best knowledge, information and belief of affiant, and further certifies that the said petition, in his opinion, is well founded in point of law, and that it is not interposed for delay.

JAMES B. MURPHY.

Subscribed and sworn to before me this Nineteenth day of June, 1913.

JNO. R. WILSON,
Notary Public in and for the State of Washington,
Residing at Seattle, said County and State.

Receipt of copy of the within Affidavit and Petition for Review acknowledged and a true copy received this 20th day of June, 1913.

J. W. RUSSELL,
Attorney for Trustee in Bankruptcy.

[Indorsed]: Affidavit and Petition for Review. Filed June 20th, 1913, 2:00 P. M. John P. Hoyt, Referee. Filed in the United States District Court, Western District of Washington, July 9, 1913. Frank L. Crosby, Clerk. By Deputy. [38]

[Opinion of Neterer, D. J., Filed September 22, 1913.]

United States District Court, Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY,

Bankrupt.

(Filed Sept. 22, 1913.)

JAMES B. MURPHY, for Petitioner.

J. W. RUSSELL, for Trustee.

NETERER, District Judge.

This matter is before the Court on the petition of the Washington Trust Company, in which it states in substance that on the 9th day of September, 1908, the

Washington Steel & Bolt Company, a corporation, executed and delivered its first mortgage coupon bonds to the amount of \$400,000, and on the same day and simultaneously therewith made, executed and delivered its mortgage upon all of its property both real and personal, and all property which it should thereafter own or acquire, including real and personal; that the mortgage was recorded in the auditor's office in Snohomish County, Washington; that thereafter and prior to insolvency there was certified by the Washington Trust Company and negotiated by the bankrupt \$53,100 of the bonds; that the Bank of Montreal, a corporation doing business in Spokane, is the owner of \$47,900 of said bonds; that the bonds provide for the payment of interest at 8% per annum, payable semi-annually, the dates of payment being March 1st and September 1st; that the deed provided upon default in interest for a period of six months and a request in writing signed by not less than one-third of the owners of bonds outstanding and the furnishing of adequate security for costs and expenses, that the Trust Company should proceed to enforce the rights of the [39] bondholders under the mortgage; that default has been made upon the interest for more than six months; that the bank of Montreal had indemnified the Washington Trust Company against costs and expenses, and had directed it to proceed in the foreclosure of said mortgage; that the mortgage is a first lien upon all of the property; that the property is not worth as much as the indebtedness due on the mortgage, and it asks that it be permitted to foreclose its mortgage upon

all of the property covered by it. The trustee answers this petition, denies the making, execution and delivery of the bonds, admits the execution and delivery of the mortgage upon the real and personal property and the recording of the mortgage, denies the bonds were certified by the Washington Trust Company, denies that the Bank of Montreal holds any bonds for value, admits that certain bonds were filed by the bankrupt, bearing eight per cent interest, with conditions of default as alleged; and alleges that no bonds were regularly issued by the bankrupt as required by the terms of the mortgage, and that all bonds issued are void; and that the mortgage so far as it embraces personal property that was permitted to be disposed of by the mortgagee for its own benefit is void. The answer prays that the mortgage be held of no effect, and that all of the bonds be cancelled.

This matter was before the Court heretofore upon an application to foreclose the mortgage in another forum. The then presiding Judge stated that, in as much as there is a dispute as to the property actually covered by the mortgage and as to the validity of the mortgage of the personal property, the status should be settled and determined in the bankrupt court as it could be done more speedily and at less [40] expense to the parties than in any other forum, and the matter was referred to the referee for the purpose of determining "all questions relating to the scope and validity of the mortgage, and when these questions are determined, the trustee must elect whether he will administer the equity of redemption for the

benefit of the general creditors, or surrender the mortgaged property for the foreclosure.” Pursuant to the suggestion in the memoranda decision the referee heard testimony, and has filed his decision, in which he holds that the validity of the mortgage has not been established, and that the authority to negotiate the bonds for the purpose given was not apparent, and that the bonds and mortgage are of no effect. The matter is now before this Court upon petition for a review.

It is first contended that the laws of the State of Washington do not authorize corporations to issue bonds and execute mortgages as disclosed by the records on file. Subdivision 3 of Sec. 3683, Rem. & Bal. Code, provides that corporations shall have power “to purchase, hold, mortgage, sell and convey real and personal property.” This provision of the statute it seems to me clearly disposes of the contention as to the power of the corporation to execute the mortgage.

It is further contended, on the argument, that there was no testimony before the Court which would show the authority for the execution of the mortgage by the officers. The certificate attached to the mortgage acknowledging its execution is as follows:

“State of Washington,
County of Spokane,—ss.

On this 1st day of September A. D. 1908, before me personally appeared Alexander McPhaden to me known to be the President and A. G. Pike to me known to be the Secretary of the [41] WASHINGTON STEEL & BOLT COMPANY, the corpora-

tion that executed the within and foregoing instrument and on oath acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath, each for himself and not one for the other, stated that he was authorized to execute said instrument and the seal affixed is the seal of the said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal in this certificate first above written.

[Notarial Seal]

S. F. STREET,

Notary Public in and for the State of Washington,
Residing at Edmonds, Washington.

There also appears the following oath:

“State of Washington,
County of Spokane,—ss.

ALEXANDER McPHADEN and A. G. PIKE, each being duly sworn on oath depose and say: That they are respectively the President and Secretary of the Washington Steel & Bolt Company, a corporation that executed the foregoing instrument; that they signed and executed the same on behalf of the Washington Steel & Bolt Company, by authority of the Board of Trustees thereof, and they make this affidavit in behalf of said Washington Steel & Bolt Company, because it is a corporation and they personally acknowledge the facts; that said instrument as a mortgage of personal property, was made in good

faith and without any design to hinder, delay, or defraud creditors.

A. McPHADEN.

A. G. PIKE.

Subscribed and sworn to before me this 1st day of September, A. D. 1908.

[Notarial Seal]

S. F. STREET,

Notary Public, in and for the State of Washington,
Residing at Edmonds, Washington.”

There is also the following acknowledgment on the part of the officers of the Washington Trust Company:

“State of Washington,
County of Spokane,—ss.

On this 9th day of September, 1908, before me personally appeared J. Grier Long, Vice-President and R. L. Webster Secretary of the Washington Trust Company of Spokane, Washington, the corporation that executed, as Trustee, the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.”

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate [42] first above written.

[Notarial Seal]

FRANK J. GUSE,

Notary Public, in and for the State of Washington,
Residing at Spokane, Washington.”

Attached to the mortgage, which was offered in evidence, is the following certificate by the county auditor of Snohomish County:

“State of Washington,
County of Snohomish,—ss.

I, P. T. Lee, Auditor of Snohomish County, State of Washington and ex-officio Recorder of Deeds in and for said County, do hereby CERTIFY the above and foregoing to be a true and correct transcript of a mortgage or Deed of Trust from the WASHINGTON STEEL AND BOLT COMPANY to the WASHINGTON TRUST CO. now of record in this office in volume 69 of Mortgages page 338, and also duly filed and indexed as a Chattel Mortgage under file number 133386, Records of said Snohomish County, Wash.

Witness my hand and official seal this 11th day of March, A. D. 1913.

P. T. LEE,
County Auditor and Ex-Officio Recorder of Deeds in
and for said County.

By John Hangen,
Deputy.”

Sec. 8796, Rem. & Bel. Code, provides:

“Copies of all deeds or other instruments of writing....which by law are to be filed or recorded in the office of the County Auditor....certified by the auditor under official seal, shall be admitted as *prima facie* evidence in all of the courts of this state.”

Sec. 1260, Rem. & Bal. Code, provides:

“Whenever any....mortgage....shall have

been recorded or filed in pursuance of law, copies of record....duly certified by the officer having the lawful custody thereof, with the seal of the office annexed....shall be received in evidence to all intents and purposes as the originals themselves.”

The supreme court of Washington holds that a certified copy of a mortgage which has been duly recorded is *prima facie* evidence of the facts recited in the certificate.

Gardner v. Port Blakely Mill Co., 8 Wash. 1;

Blewett v. Hash, 22 Wash. 536. [43]

The Trustee admitted the execution of the mortgage, which carries authenticity of the corporate seal. It seems to be well settled that a document signed by the secretary and president of a corporation, with corporate seal affixed, is *prima facie* evidence that it was legally executed. Thompson on Corporations, Vol. 4, Secs. 51, 55, says in substance that the seal of a corporation when established carries with it presumptive proof of everything else which is necessary to the validity of the instrument. It is, however, only *prima facie* evidence, and the effect of it is to shift the burden of proof upon the party alleging the non-execution and to require him to prove by clear and satisfactory evidence the want of authority to execute. The mortgage being executed by the president and secretary and having affixed thereto the corporate seal, such officers must be presumed to have acted within their corporate authority, and the burden of proving the contrary is on

the party alleging the want of authority or non-execution.

Schallard v. Eel River Na. Co., 11 Pac. 590;

Nevada Nickel Syndicate v. National Nickel Co.,
96 Fed. 133,148.

As to the issuance of the notes or bonds, the testimony shows that \$20,000 of these bonds were delivered to McPhaden, the president, in payment of \$18,000 in money advanced by him from time to time to the corporation. The bonds were delivered more than four months prior to the insolvency. These bonds were delivered by McPhaden to the Bank of Montreal at Spokane; the consideration for all of the bonds was used by the bankrupt corporation. Thereafter further deliveries of bonds were made to the Bank of Montreal to the amount of \$24,500 and \$3,400. All of the bonds were delivered after being certified by the Washington Trust Company, as testified by [44] witness Ambrose, and were delivered as stated by Pike—in response to an inquiry:

“Well, at this latter time I judge the board of trustees added to the collateral with the Bank of Montreal, \$25,000 worth of additional security they already had. . . . It is a matter of record in the minute-book. . . . There was a motion made and carried. . . . Motion of board ordered the Washington Trust Company to turn them over to the bank.”

“Q. I will ask you if this money was borrowed by and used for the Washington Steel & Bolt Company or borrowed for and used by the Washington Steel & Bolt Company. A. Every cent of it. Q. Were you and Mr. McPhaden getting

this money, or was the Washington Steel & Bolt Company getting it? A. The Washington Steel & Bolt Company.”

This shows that affirmative action was taken by the board of trustees upon issuance of the bonds, and the minute-book being lost, such oral proof was properly admitted.

It is contended that the \$20,000 delivered to McPhaden for an indebtedness due to him was unlawful; and also the delivery of the bonds to the Bank of Montreal was without authority. The \$20,000 in bonds delivered to McPhaden having been more than four months prior to the insolvency of the bankrupt would not be avoided merely because it was for a prior existing indebtedness, nor would the delivery of the \$24,500 to the bank of Montreal to pay an overdraft for moneys which were being received from the bank and used by the Washington Steel & Bolt Company in the ordinary course of business. The money having been received by the corporation and used by it in the ordinary course of business with the knowledge of its officers and trustees, the corporation would be estopped from disclaiming delivery of the bonds, and such facts would operate as a ratification on the part of the corporation.

Kirwin v. Washington Match Co., 37 Wash. 285.

Porter v. Lassen County Land & Cattle Co., 59 Pac. 563;

Sells v. Rosedale Grocery & Commission Co., 17 So. 236;

Indianapolis Rolling Mill v. St. Louis etc. R., 120 U. S. 256. [45]

The testimony discloses that at a meeting of the board of trustees, at which there were present at least three members—Pike, McPhaden and Hall—the officers were authorized and directed to deliver these bonds to the Bank of Montreal. The minutes of that meeting perhaps were not actually prepared and signed at the meeting, but final action was taken, and the mere clerical work of extending the minutes into the record was left open. The witness was not certain that this was the meeting where that was done, but there was one meeting of the board at which this was done. Whether it was or not, it is immaterial; it is the conjunctive action of the board assembled for the purpose which operates to make a lawful meeting, and not the formal entry of the action that was taken. I am unable to determine from the testimony the amount of the bonds that were legally issued. From the testimony presented, I am satisfied that the \$20,000 of bonds delivered to McPhaden in payment of \$18,000 in money advanced are valid obligations against the estate. The fact that these bonds were issued for ninety cents on the dollar, when the bankrupt should have received ninety-five cents on the dollar, would not invalidate the bonds in the hands of the Bank of Montreal, an innocent holder. A liability may exist against some one for the 5% difference. I think, under the testimony, the \$27,500 additional bonds delivered to the Bank of Montreal are likewise valid liens. There is no testimony before the court as to the other bonds that are claimed to have been issued, or the circumstances under which such issuance was

made, or the authority by which they were negotiated.

It is contended that the mortgage is invalid as to the after-acquired property, both real and personal. The part of the mortgage intended to cover after-acquired property is as follows: [46]

“It is specially declared to be the intent and meaning hereof, that this mortgage shall embrace and cover all real and personal property, including all leasehold rights hereafter acquired, *an* all inventions, patents, patented, rights, licenses and franchises of every kind, and any and all other property of every nature, kind, and description now owned or hereafter acquired by the Washington Steel & Bolt Company, wheresoever situated, nevertheless, provided that the said Washington Steel & Bolt Company shall have the right to sell in the usual course of trade the stock and manufactured products of said Washington Steel & Bolt Company, freed from any lien under this mortgage or deed, but in case of foreclosure of this mortgage, any and all remaining unsold at that time shall be subject to the lien and condition of this mortgage.”

Under the law a mortgage may be so framed as to cover property to be afterwards acquired, and an equitable lien attaches immediately upon its acquisition.

27 Cyc. 1141-1142;

20 Am. & Eng. Enc. of Law, 916;

5 Am. & Eng. Enc. of Law, and cases cited;

12 Wall. 362 (United States v. N. O. Ry.);

Central Trust Co. v. Kneeland, 138 U. S. 414.

Fosdick v. Schall, 99 U. S. 285;

Farmers' Loan & Trust Co. v. Denver, etc., Co.,
126 Fed. 46;

Knowles Loom Works v. Ryle, 97 Fed. 730;

Boston Safe-Deposit & Trust Co. v. Bankers &
Merchants' Tel. Co., 36 Fed. 288.

I think the mortgage in so far as it seeks to cover stock and manufactured products of the Washington Steel & Bolt Company is invalid as to creditors and Trustee in Bankruptcy. The provisions of the mortgage would not be sufficient to hold the stock and manufactured products of the concern. The mortgage is valid as to the other properties.

The conclusion of the referee holding the mortgage herein invalid is therefore reversed.

In view of the condition of the record and the fact that all parties suggested by the record as holding bonds are not before the Court except through the trustee, and some holders of bonds are appearing by counsel, this matter will be remanded to the referee with instructions to ascertain [47] the amount and status of all bonds and report to the Court, to the end that all parties may receive equal protection.

JEREMIAH NETERER,

Judge.

[Indorsed]: Memo. Filed in the United States District Court, Western District of Washington, Sep. 22, 1913. Frank L. Crosby, Clerk. By B. O. Wright, Deputy. [48]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY, a Corporation,
Bankrupt.

Order [Reversing Order of Referee, etc.].

BE IT REMEMBERED, That this cause came on duly and regularly for argument on the 8th day of September, 1913, upon the petition of the Washington Trust Company for a review of the order and decision of the Honorable John P. Hoyt, Referee, touching the validity of the mortgage executed and delivered by the Washington Steel & Bolt Company on September 9th, 1908, and the bonds secured by same; and the Court, having heard the argument, and becoming fully advised in the premises rendered and filed herein on September —, 1913, a memorandum decision, and thereafter a petition for rehearing was filed and the same was presented and argued to this court on September 13, 1913, and then denied,

NOW THEREFORE, IT IS HEREBY ORDERED, CONSIDERED AND ADJUDGED, That the order of the Referee herein sought to be reviewed be and the same hereby is reversed, and that the said mortgage be and the same hereby is adjudged and decreed a valid and existing lien according to its tenor upon all the property described

therein, and also upon all property acquired by said bankrupt subsequent to the execution of said mortgage, excepting, however, the stock of raw material obtained for manufacturing purposes and the manufactured product now possessed by the said bankrupt and its Trustees and as to said stock of raw material acquired for manufacturing purposes and the manufactured product the said mortgage is hereby adjudged [49] and decreed to be invalid; and,

This matter is remanded to the Referee to take proof and ascertain the status of each of the bonds issued under said mortgage and the amount due and owing upon each of said bonds and allow such items as justified by evidence and report his findings thereon to this court.

The Trustee in Bankruptcy excepts to each and every part hereof except that portion holding the mortgage invalid as to the raw material and the manufactured product and the petitioner, the Bank of Montreal, excepts to that portion hereof holding the mortgage invalid as to such raw materials and manufactured products.

Done in open court this 14th day of November, A. D. 1913.

JEREMIAH NETERER,

Judge.

Due service of the within Order and Decree acknowledged and a true copy received this 29 day of October, 1913.

[Endorsed]: Order and Decree. Filed in the United States District Court, Western District of

Washington. Nov. 14, 1913. Frank L. Crosby,
Clerk. By B. O. Wright, Deputy. [50]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Report of Referee.

This matter having been taken to the Court, on review, from a decision of the Referee holding the trust deed, or mortgage, herein invalid; and the Court having reversed the order of the Referee, and remanded the matter to the Referee "to take proof and ascertain the status of each of the bonds issued under said mortgage and the amount due and owing upon each of said bonds and allow such items as justified by the evidence and report his findings thereon to this Court; and the parties hereto having appeared before the undersigned, and submitted their proofs and allegations touching the validity of said bonds; and the Referee having made a report thereon; and the Court having referred the matter back to the Referee to make findings of fact and conclusions thereon, I make the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT.

I.

That heretofore, and on or about the 1st day of September, 1908, the bankrupt herein, WASHING-

TON STEEL & BOLT COMPANY, a corporation, made its certain trust deed, or mortgage, to secure an issue of \$200,000 of bonds, \$75,000 of which bonds were to be immediately issued, and the balance thereof at some later date to be determined by the Trustees of said corporation. That, among other things, said mortgage, or trust deed, provided that none of said bonds should be sold or disposed of at less than ninety-five cents on the dollar of their face value, which provision was, by the terms of said instrument, made a condition running therewith, as follows: [51]

“ARTICLE XIX.

It is also mutually understood and agreed that as a further consideration running with this indenture that any bond or bonds issued under or secured by this indenture shall not be sold or disposed of directly or indirectly at a greater discount than five (5%) per cent thereof, that is to say, said bond or bonds shall not be sold or disposed of for less than ninety-five (95) cents on the dollar, of the par or face value of said bonds.”

II.

That said trust deed, or mortgage, was recorded in the office of the Auditor of Snohomish County, Washington, on the 15th day of September, 1908. That the office of said bankrupt corporation was located at Edmonds, Snohomish County, Washington, and the property covered by said trust deed, or mortgage, was situate in said county.

III.

That said trust deed, or mortgage, further provided

that the bonds to be issued thereunder were to be 750 in number, numbered from 1 to 750, inclusive. That 500 of said bonds were to be of the denomination of \$100 each; that 200 thereof was to be of the denomination of \$500 each; and that 50 thereof were to be of the denomination of \$1000 each.

IV.

That the bonds issued under said trust deed, or mortgage, and each of them, irrespective of whether they were intended as \$100 bonds; \$500 bonds; or \$1000 bonds, were in the following form, a number being inserted after the "No.," and an amount, "100," "500," or "1000," after the "\$5" at the top:

UNITED STATES OF AMERICA.

STATE OF WASHINGTON,

No.

WASHINGTON STEEL & BOLT COMPANY,
Edmonds, Washington.

First Mortgage Eight Per Cent Gold Bond. [52]

KNOW ALL MEN BY THESE PRESENTS:
That WASHINGTON STEEL & BOLT COMPANY, a corporation duly organized and existing under the laws of the State of Washington, for value received, acknowledges itself indebted to the bearer of this bond, or if this bond be registered to the registered holder thereof in the sum of One Thousand (\$1000) Dollars, (or Five Hundred (\$500) Dollars or One Hundred (\$100) Dollars as the case may be) which it hereby promises and agrees to pay in United States gold coin of the present standard of weight and fineness, on the first day of September, 1918, at the office of The Washington Trust Company,

Trustee, in the City of Spokane, County of Spokane, State of Washington, with interest thereon from the date of issue or sale thereof until paid, at the rate of eight (8%) per centum per annum payable semi-annually in like gold coin on the first day of March and September in each year on the presentation and surrender of the coupons annexed hereto, as they severally become due; all payments upon this bond both principal and interest shall be made without deduction for any tax or taxes that said Washington Steel & Bolt Company may be required to pay or to retain therefrom by any present or future laws of the United States of America, or of the State of Washington, said Washington Steel & Bolt Company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is one of a series of Seven Hundred and Fifty (750) bonds, all of the same tenor and date, numbered consecutively from one (1) to and including the number Seven Hundred and Fifty (750). The first Five Hundred (500) bonds being of the denomination of One Hundred (\$100) Dollars each, and Two Hundred (200) bonds being of the denomination of Five Hundred (\$500) Dollars each and Fifty (50) bonds being of the denomination of One Thousand (\$1000) Dollars each, and all said bonds with the coupons thereto attached, are equally secured by a first mortgage or deed of trust, duly executed and delivered by the said Washington Steel & Bolt Company to THE WASHINGTON TRUST COMPANY in Spokane, County of Spokane, State of Washington, as Trustee, subject to all [53] the provisions and conditions therein, bearing even date

with this bond authorized by said WASHINGTON STEEL & BOLT COMPANY to be issued to an amount not exceeding in the aggregate the principal sum of Two Hundred Thousand (\$200,000) Dollars, nevertheless, with the understanding that Seventy-five Thousand (\$75,000) Dollars of said bonds shall be issued and placed on the market on the execution and delivery of this said Indenture, and the balance of One Hundred and Twenty-five Thousand (\$125,000) Dollars of said bonds to be held by the Trustee, and not issued and put on the market only in the event and at such time in the future as the Trustees of said Washington Steel & Bolt Company may deem to be for the best interests of said company, and covering and conveying all real property and personal property owned by said WASHINGTON STEEL & BOLT COMPANY, and particularly described in said mortgage and to which reference is hereby made for the nature and extent of the security and rights of the holders of these bonds, and the terms and conditions thereof, which is duly recorded in the office of the County Auditor of Snohomish County, State of Washington; in case default shall be made and shall continue for six (6) months in the payment of any interest on any of the bonds secured by this Indenture the principal of the said bonds with all the interest accrued and unpaid thereon, shall become due and payable at the election and upon declaration of the owners of one-third in amount of said bonds, then outstanding.

This bond may pass by delivery but may be registered as to the number thereof, upon the transfer

book of the TRUSTEE at its office, and after such registration duly certified thereon by the TRUSTEE this bond shall be transferred only on said books, unless transfer be to bearer, when it shall be again transferred by delivery subsequent to registration in like manner. This bond shall not become obligatory until it shall have been authenticated by the certificate of the Trustee endorsed hereon. [54]

No recourse shall be had for the payment of the principal or interest of this bond, against any individual incorporator, stockholder, officer or Trustee of said Washington Steel & Bolt Company, and any and all liabilities of incorporators, stockholders, trustees and officers of the said Washington Steel & Bolt Company individually being hereby released.

IN WITNESS WHEREOF, the said WASHINGTON STEEL & BOLT COMPANY has caused these presents to be signed and executed in its corporate name by its President, and countersigned by its Secretary, and its corporate seal hereto affixed, and the coupons for interest being authenticated by the engraved signature of its Treasurer to be attached hereon, this first day of September, 1908, all pursuant to legal authority in them vested to that end.

WASHINGTON STEEL & BOLT COMPANY,

By A. McPHADEN, President.

[L. S.] Attest: A. G. PIKE, Secretary."

V.

That on or about the 1st day of September, 1908, by the direction of Washington Steel & Bolt Company, the bankrupt, there was issued to A. McPhaden by The Washington Trust Company, trustee under

said trust deed, or mortgage, what purported to be \$23,000, par value, of said bonds in payment of credits then shown by the books of said Washington Steel & Bolt Company to be owing to said McPhaden. That said McPhaden was then a stockholder and trustee of said corporation, and was then the president thereof. That said bonds were so issued to said McPhaden at ninety cents on the dollar of their purported par value.

VI.

That on or about the 1st day of September, 1908, by the direction of Washington Steel & Bolt Company, the bankrupt, there was issued to A. G. Pike by The Washington Trust Company, trustee under said trust deed, or mortgage, what purported to be \$2,900, par value, of said bonds [55] in payment of credits then shown by the books of said Washington Steel & Bolt Company to be owing to said Pike. That said Pike was then a stockholder and trustee of said corporation, and was then the secretary thereof. That said bonds were so issued to said Pike at ninety cents on the dollar of their purported par value.

VII.

That there were issued to the said A. McPhaden, from time to time thereafter, other of said bonds of the purported par value of \$11,200. That all such bonds were so issued by said trustee by the direction of the officers of said Washington Steel & Bolt Company, and in each instance were in payment of credits shown by the books of said corporation to be owing to said McPhaden, That all such bonds were so is-

sued to said McPhaden at ninety cents on the dollar of their purported par value, and that during all such times said McPhaden was a stockholder and trustee of said corporation, and was the president thereof.

VIII.

That neither the said McPhaden or the said Pike paid any other or different consideration for said bonds, or any of them, than said credits, nor did either of them ever pay to said Washington Steel & Bolt Company any greater consideration for said bonds than said ninety cents on the dollar of the par value thereof.

IX.

That from the 1st day of May, 1909, to the 28th day of July, 1909, both dates inclusive, the said A. McPhaden and the said A. G. Pike made and executed their four certain promissory notes, aggregating \$20,000 in amount, payable to the order of Washington Steel & Bolt Company, as follows:

May 1, 1909, one note for	\$10,000
May 11, 1909, one note for	5,000
June 16, 1909, one note for	2,500
July 28, 1909, one note for	2,500

[56]

That said notes were endorsed by said Washington Steel & Bolt Company and were discounted by the Bank of Montreal, and the proceeds thereof placed to the credit of Washington Steel & Bolt Company. That as collateral to the said notes said McPhaden and Pike placed with said Bank of Montreal the bonds so issued to said Pike and \$20,000 of the bonds

so issued to said McPhaden.

X.

That no part of said notes has been paid, except that interest thereon has been paid to December 23, 1910.

XI.

That of the balance of said bonds so issued to said McPhaden, to wit \$14,200 par value, \$13,000 thereof were turned over by him to the following named persons in payment of debts owing them by him, to wit:

C. F. Chapin, Coeur d'Alene, Idaho.....	\$2,500
Meta McElroy, Spokane, Wash.....	2,000
J. H. Osborne, Chicago, Ill.....	5,900
Thomas S. Burley, Seattle, Wash.....	2,600

That the balance of said bonds (\$1,200) were not accounted for, and no testimony was given concerning them.

XII.

That said Chapin, McElroy and Burley were, at the time they acquired said bonds from said McPhaden, stockholders in said Washington Steel & Bolt Company, and each of them was a stockholder.

XIII.

That on, or about, the 20th day of March, 1911, a purported resolution of the board of trustees of Washington Steel & Bolt Company was prepared and sent to A. G. Pike, secretary and treasurer of said corporation, for adoption by said board. That said board of trustees at that time consisted of seven members. That no meeting of said board was called, nor did said board of trustees meet, nor did they adopt said resolution. That said Pike signed said

purported resolution; that two of the other trustees—Ammon and Hall—were telephoned to to come [57] to the office of the company to sign it. That Ammon went to the office and signed it without any other trustee being present. That afterwards Hall came there and signed it in presence of Ammon only of the trustees, and that it was taken to, and signed by two of the other trustees—Cosford and Ready—without any other member of the board of trustees being present. That said purported resolution provided that \$25,000 of “unsold bonds be placed with the Bank of Montreal as collateral on a \$20,000 loan that this company owes.” That upon the strength of said purported resolution, and not otherwise, there was issued and delivered to the Bank of Montreal \$25,000 of the bonds of Washington Steel & Bolt Company, the bankrupt, which said \$25,000 of bonds are a part of the bonds now held by said bank, and upon which the trustee, The Washington Trust Company, is seeking to foreclose said trust deed, or mortgage. That the only debt owed by said bankrupt to said bank at the time said \$25,000 of bonds was issued to it, as aforesaid, was that evidences by said \$20,000 notes, and there was no other or different consideration for the issuance of said \$25,000 of bonds, or any of them.

XIV.

That there was never a legal meeting of the board of trustees of said Washington Steel & Bolt Company. That said board was never called together as provided by the By-laws of said corporation, and was never legally called together. That there was never

any pretense of said board meeting after April 30, 1909. That none of the trustees of said corporation ever took the oath of office prescribed by law, or any oath as such trustees.

XV.

That said Washington Steel & Bolt Company was capitalized at \$2,000,000. That \$1,400,000 of said stock was given to said A. McPhaden in payment of a certain patent-right known as the "Clino Rail Joint Patent." That said patent-right was never used, by or attempted to be used by said corporation, the bankrupt, nor did it demonstrate, or [58] attempt to demonstrate its value, if value it had. That said patent-right was not worth to exceed \$4,500.

XVI.

That at all times said McPhaden owned a majority of the stock of said Washington Steel & Bolt Company, and absolutely controlled its officers and board of trustees. That the only business carried on by said corporation was the manufacture and sale of bolts, and that its business was very profitable for a time.

CONCLUSIONS OF LAW.

I.

That the issuance of said bonds to said McPhaden and Pike was *ultra vires* and void, and the issuance of each of said bonds was *ultra vires* and void.

II.

That none of said bonds were enforceable against the bankrupt in the hands of said McPhaden or Pike.

III.

That the issuance of said \$25,000 of bonds to the

Bank of Montreal was *ultra vires* and void, and that said bonds are unenforcible against said bankrupt.

IV.

That each and every of the bonds issued by Washington Steel & Bolt Company, the bankrupt, was and is a non-negotiable instrument.

V.

That, by reason of the reference in each of said bonds to the trust deed, or mortgage, the transferees thereof took the same with knowledge of all the terms and conditions of said trust deed, or mortgage.

VI.

That none of the holders of said bonds are *bona fide* holders thereof, or holders thereof in due course.

VII.

That each and every of the outstanding bonds of said Washington Steel [59] & Bolt Company is a nullity.

All of which is respectfully submitted.

Dated July, 20, 1914.

JOHN P. HOYT,

Referee.

Receipt of a copy together with notice of presentation to referee at 2 o'clock P. M. July 13, 1914 and due service hereof admitted this 13th day of July, 1914.

JAMES B. MURPHY,

Attorney for Petitioner.

Sirs:

You will please take notice that the within Findings of Fact and Conclusions of Law will be presented

to the Referee for signing at 2 o'clock P. M. July 13, 1914.

Yours, etc.,
J. W. Russell,
Atty. for Trustee.

To Jas. B. Murphy, Esq.,
Atty. for Petitioner.

[Indorsed]: Findings of Fact and Conclusions of Law. Filed July 20th, 1914, 2 P. M. John P. Hoyt, Referee.

Filed in U. S. District Court, for the Western District of Washington, Northern Division, July 21, 1914. [60]

[Order of Referee Disallowing Claim of Washington Trust Co. etc.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

This matter having been taken to the Court, on review, from a decision of the Referee holding the trust deed, or mortgage, herein invalid; and the Court having reversed the order of the Referee, and remanded the matter to the Referee "to take proof and ascertain the status of each of the bonds issued under *under* the mortgage and the amount due and owing upon each

of said bonds and allow such items as justified by the evidence and report his findings thereon to this Court''; and the parties hereto having appeared before the undersigned, and submitted their proofs and allegations touching the validity of said bonds; and the Referee having made a report thereon; and the Court having referred the matter back to the Referee to make findings of fact and conclusions thereon; and such findings and conclusions having been made,

Now, on motion of J. W. Russell, attorney for the Trustee herein,

ORDERED, that the prayer of the petitioner herein, The Washington Trust Company, be, and the same hereby is denied, and it is further

ORDERED, that the claim of said petitioner, The Washington Trust Company, be, and the same hereby is rejected, disallowed and expunged from the list of claims upon the record in this case. Exception of Washington Trust Co. allowed.

Dated July 20, 1914.

JOHN P. HOYT,
Referee. [61]

[Endorsed]: Order Disallowing Claim. Filed July 20th, 1914, 2 P. M. John P. Hoyt, Referee. Filed in the U. S. District Court, July 21, 1914. [62]

**[Exceptions of Washington Trust Co. to Report,
Findings of Fact and Conclusions of Law of
Referee.]**

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Comes now the Washington Trust Company, the petitioner in the above matter, at the time of the signing of the report of the referee, and makes the following objections and exceptions to said report and the Findings of Fact and Conclusions of Law made by said referee.

I.

Said Washington Trust Company hereby objects and excepts to the first finding of fact and to the whole and every part thereof and especially to that part thereof wherein the referee finds that the mortgage or trust deed therein referred to was executed on the first day of September, 1908, for the reason and upon the grounds that the said finding is not supported by the proofs and is contrary thereto, and is against the weight of the evidence and not within the scope of the authority of the referee.

II.

Said Washington Trust Company excepts to finding IV and to the whole and every part thereof ex-

cept the copy of the bond as therein set forth as illustrating the general tenor of the bonds therein referred to.

III.

Said Washington Trust Company excepts to finding V made by the said referee and to the whole and every part thereof, and especially that part of said finding wherein the referee finds [63] that the bonds therein referred to were delivered to McPhaden in payment for credits shown by the books of the Washington Steel & Bolt Company for the reason and upon the grounds that the said finding is not supported by the proofs offered and is contrary thereto and contrary to the weight of the evidence.

IV.

Said Washington Trust Company excepts to finding VI and the whole and every part thereof for the reason and upon the ground that the same is unsupported by any testimony or proof and is contrary to the great weight of the same.

V.

Said Washington Trust Co. excepts to finding VII and to the whole and every part thereof and especially to that part thereof wherein the referee finds that the bonds referred to therein were given in payment of credits shown by the books of the corporation to be owing to McPhaden and to that part of the said finding wherein the referee finds that the said McPhaden was during all of said time a trustee and President of said corporation, for the reason and upon the ground that the same is unsupported by the testimony and contrary thereto.

VI.

Said Washington Trust Company excepts to finding VIII and to the whole and every part thereof for the reason and upon the ground that the same is not supported by the testimony and is contrary to the testimony offered upon the trial.

VII.

Said Washington Trust Company excepts to finding IX and to the whole and every part thereof, and especially to that part wherein the Referee finds that the notes therein referred to were discounted by the Bank of Montreal and the proceeds thereof placed to the credit of the Washington Steel & Bolt Company, and [64] especially excepts to that part of said finding wherein the Referee finds that as collateral to said notes, bonds issued to McPhaden & Pike were pledged to secure the payment thereof.

VIII.

Said Washington Trust Company excepts to finding XI and to the whole and every part thereof for the reason and upon the grounds that the same is not supported by any testimony and is contrary to the great weight thereof.

Said Washington Trust Company excepts to finding XII and to the whole and every part thereof for the reason and upon the ground that the same is unsupported by any testimony and is contrary to the testimony offered upon the trial.

IX.

Said Washington Trust Company excepts to finding XIII and to the whole and every part thereof for the reason and upon the ground that the same is un-

supported by any testimony and is contrary to the testimony offered upon the trial.

X.

Said Washington Trust Company excepts to finding XIV and to the whole and every part thereof for the reason and upon the ground that the same is unsupported by any testimony and is contrary to the testimony offered upon the trial.

XI.

Said Washington Trust Company excepts to finding XV and to the whole and every part thereof for the reason and upon the ground that the same is unsupported by any testimony and is contrary to the testimony offered upon the trial.

XII.

Said Washington Trust Company excepts to finding XVI and to the whole and every part thereof for the reason and upon the ground that the same is unsupported by any testimony and is contrary to the testimony offered upon the trial. [65]

XIV.

Said Washington Trust Company excepts to conclusion I made by said referee for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

XV.

Said Washington Trust Company excepts to conclusion II made by the Referee for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

XVI.

The Washington Trust Company excepts to conclusion III for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

XVII.

The Washington Trust Company excepts to conclusion IV for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

XVIII.

The Washington Trust Company excepts to conclusion V for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

XIX.

The Washington Trust Company excepts to conclusion VI for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion. [66]

XX.

The Washington Trust Company excepts to conclusion VII for the reason and upon the ground that it is unjustified by the findings of the Referee and because there was no testimony offered upon the trial justifying said conclusion.

JAMES B. MURPHY,

Attorney for Washington Trust Company.

The foregoing objections and exceptions, at the time of the signing of the Referee's report this day signed herein, were duly and regularly made and presented and the said objections and exceptions are hereby allowed.

Dated this 20th day of July, 1914.

JOHN P. HOYT,
Referee.

[Endorsed]: Exceptions. Filed July 20, 1914, 2 P. M. John P. Hoyt, Referee. Filed U. S. District Court, Jul. 21, 1914. Frank L. Crosby, Clerk. [67]

*In the District Court of the United States in
and for the Western District of Washington,
Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Exceptions to Order Disallowing Claim [of
Washington Trust Co.].**

Comes now the Washington Trust Company, and having heretofore reserved its exceptions to the order entered herein on the 20th day of July, 1914, hereby formally excepts to the whole and every part of said order, and especially to that part of said order wherein the motion of J. W. Russell, Attorney, is granted, and the prayer of the petition of the Washington Trust Company is denied and wherein the said Referee orders that the claim of the Wash-

ington Trust Company be rejected and disallowed and expunged from the list of claims upon record in that case.

JAMES B. MURPHY,

Attorney for Washington Trust Company.

The foregoing exceptions were duly and regularly presented, and are hereby allowed.

Dated this 20th day of July, 1914.

JOHN P. HOYT,

Referee.

[Indorsed]: Exceptions to Order Disallowing Claim. Filed in the United States District Court, Western District of Washington. July 21, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [68]

[Petition of Washington Trust Co. for Review of Findings of Fact and Conclusions of Law and Judgment of July 20, 1914.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

PETITION FOR REVIEW.

To the Honorable Referee in Bankruptcy:

Your petitioner, the Washington Trust Company, feeling itself aggrieved by the Findings of Fact and Conclusions of Law and Judgment ren-

dered in the above-entitled cause by you, on the 20th day of July, 1914, touching the validity of the bonds involved in the above-entitled matter, hereby petitions for a review of all matters touching or in any way concerning or relating to the validity of said bonds and the amount due thereon by the above-entitled court and the judge thereof, and as grounds for review your petitioner respectfully represents as follows:

I.

That heretofore, to wit, on the 6th day of July, 1914, the above-entitled court referred this matter back to the Referee to make Findings of Fact, Conclusions of Law and to enter an order or judgment thereon touching the validity of the bonds and the amount due thereon and concerning the circumstances said bonds were negotiated under an order previously, to wit, on the 14th day of November, 1913, entered herein, and that the said Referee, on the 20th day of July, 1914, filed his Findings, Conclusions of Law and Judgment herein, declaring the said bonds void and disregarded the principles of law announced as the law of the case by the above-entitled court, and neglected to make findings of fact concerning the amounts due upon said bonds and the circumstances under which they were sold. [69]

II.

That your petitioner feels itself aggrieved by the said Findings of Fact, Conclusions of Law and order or judgment, and desires the correctness thereof, and of the whole and every part thereof to be reviewed by the Judge of the District Court for the Western

District of Washington, Northern Division, and your petitioner contends that the said findings, conclusions and order or judgment of the Referee are erroneous, and that the said Referee committed error in the following particulars:

1. That said Referee erred in disregarding the law as announced by the Court for his guidance in determining the validity of the said bonds, and in taking evidence pertaining thereto.

2. That the said Referee erred in failing and neglecting and refusing to make findings of fact touching the amount due upon said bonds.

3. That the Referee erred in failing, neglecting and refusing to make any findings of fact concerning the status of each bond issued under said mortgage and the amount due thereon.

4. That the said Referee erred in making Finding I, and especially in finding that the mortgage therein referred to was made on or about the first day of September, 1908.

5. That said Referee erred in failing and neglecting and refusing to find that the said mortgage was executed on or about the 9th day of September, 1908, instead of the first day of September, 1908.

6. That the said Referee erred in making Finding IV and in making the whole and every part thereof except as to the general tenor of the bonds, the form of which is set forth therein.

7. That the said Referee erred in making his Finding V and in making the whole and every part thereof, and erred in finding in said fifth paragraph of said findings that the bonds therein referred to

were delivered to McPhaden in payment for credits shown [70] by the books of the Washington Steel & Bolt Company.

8. That the said Referee erred in failing and refusing to find that the said McPhaden paid cash into the treasury of the said Bank for all the bonds that were issued to him, and in failing and neglecting to find that the Washington Steel & Bolt Company received and used the money paid in by McPhaden and in failing and refusing to find that McPhaden paid the money into the said treasury for the purpose of purchasing bonds therewith, and that the said Washington Trust Company received the said money knowing that it was paid in by said McPhaden on account of bonds to be delivered to him, and that the said Referee further erred in finding that the bonds were issued to McPhaden for ninety cents (90¢) on the dollar and in failing and refusing to find that the bonds were sold to McPhaden for ninety-five cents (95¢) on the dollar and that McPhaden was allowed five percent (5%) commission.

9. That the said Referee erred in making the sixth finding of fact and the whole and every part thereof, and in finding that the stock issued to A. G. Pike was issued to him in payment of credits then appearing in his favor on the books of the Washington Steel and Bolt Company, and further erred in finding that the said bonds were issued to the said Pike at ninety cents (90¢) on the dollar of their par value instead of ninety-five per cent (95%) of their par value, five per cent (5%) being allowed as a commission.

10. That the said Referee erred in making the seventh finding of fact and in making the whole and every part thereof. The said Referee further erred in finding that the bonds in said paragraph VII referred to were in each instance issued in the payment of credits shown by the books of the said corporation to be owing to the said McPhaden, and in finding that the said bonds were issued to McPhaden at (90¢) ninety cents on the dollar and that the said McPhaden was at all of the time the President and Trustee of the said company, and erred in failing to find that the said bonds were in reality directly [71] sold to the present holders thereof through McPhaden, and in failing and refusing to find that the said bonds were issued to McPhaden for cash payments made by him for the express purpose of purchasing bonds therewith and in failing to find that the said bonds were issued to McPhaden for ninety-five cents (95¢) on the dollar instead of ninety cents (90¢) Five cents (5¢) being allowed him for a commission for selling said bonds, and in further failing and refusing to find that the said McPhaden was not, during all of said time, the President and Trustee of the said Washington Trust Company.

11. That the said Referee further erred in making the eighth finding of fact and in making the whole and every part thereof, and in failing and refusing to find that the said McPhaden and Pike referred to therein did pay cash for all the bonds issued to them or either of them, and that they were sold to the said McPhaden and Pike at ninety-five cents (95¢) of their par value, and that McPhaden and

Pike were allowed the usual commission of five cents (5¢) in addition thereto.

12. That the said Referee erred in making the ninth finding of fact and the whole and every part thereof, and in finding that McPhaden and Pike executed their promissory notes to the Washington Steel & Bolt Company and that the Washington Steel & Bolt Company discounted said notes at the Bank of Montreal, and the said Referee further erred in failing and refusing to find from the testimony in that connection that the said Washington Steel & Bolt Company, prior to the execution of the notes therein, referred to, had arranged for a line of credit with the Bank of Montreal to the extent of Twenty Thousand Dollars (\$20,000.00), and provided for a loan in that sum and that the Bank of Montreal required, in addition to the credit and standing of the said Washington Steel & Bolt Company, that McPhaden and Pike should execute and deliver their promissory note to the Washington Steel & Bolt Company and the Washington Steel & Bolt Company should in turn endorse it to the Bank [72] of Montreal and that the bonds therein referred to should be deposited with the Bank of Montreal, each and all, as security for the sole and only purpose of money loaned to the said Washington Steel & Bolt Company and further erred in failing and refusing to find that the notes and the bonds referred to in said paragraph were delivered to the Bank of Montreal as collateral security for advances and loans made to the Washington Steel & Bolt Company, and not otherwise, and in failing to find the

correct amount of bonds deposited with the Bank of Montreal by the said Pike & and the said McPhaden as such security.

13. That the said Referee further erred in making Finding XI and in making the whole and every part thereof, and in finding that the bonds issued to McPhaden were turned over by him to the persons therein named, and in failing and refusing to find in that particular that the said Chapin, McElroy and Burley purchased their bonds from the Washington Steel & Bolt Company through McPhaden, and that they paid therefor One Hundred cents (100¢) on the dollar.

14. That the said Referee erred in making his Finding XII and in making the whole and every part thereof, in finding that the said Chapin, McElroy and Burley were, at the time they acquired the bonds therein referred to, stockholders of the Washington Steel & Bolt Company.

15. That the said Referee erred in making Finding XIII and in making the whole and every part thereof, and in failing and refusing to find that the said Board of Trustees met, considered and passed the resolutions therein referred to, and in failing and refusing to find that the bonds in said paragraph referred to were not duly and regularly issued and lawfully and with authority delivered by the Washington Trust Company to the said Bank of Montreal pursuant to resolutions of the Board of Trustees of the Washington Steel & Bolt Company duly and regularly made.

16. That the said Referee erred in making his fourteenth finding of fact and in making the whole

and every part thereof and in finding that there was never a legal meeting of the Board of [73] Trustees of the Washington Steel & Bolt Company and in finding that the Board was never called together, as provided by the by-laws of the said corporation and was never legally called together and in further finding that there was never any pretense of said Board meeting after April 30, 1909, and in further finding that none of the trustees of said corporation ever took the oath of office as prescribed by law or the oath as trustees, and failing and refusing to find that the trustees of said corporation met as such, considered their action and knowingly and intelligently voted upon all the issues and matters pertaining to said bonds referred to in said paragraph.

17. That the said Referee further erred in making the fifteenth Finding of Fact, and the whole and every part thereof, the same being unnecessary and irrelevant to the issue and unsupported by the testimony.

18. The said Referee erred in making Finding XVI, and in making the whole and every part thereof, and in finding that the said McPhaden absolutely controlled its officers and the Board of Trustees, and in failing and refusing to find that the said Board of Trustees acted intelligently and according to its best judgment.

19. That the said Referee erred in making the first conclusion of law and in failing and neglecting to conclude that the bonds therein referred to were legal and lawfully made and issued and that each of the said bonds is valid.

20. That the said Referee erred in concluding that

none of the bonds were enforceable against the Bankrupt in the hands of McPhaden and Pike and in failing and neglecting to conclude that the said bonds and each of them were enforceable against the said Bankrupt in the hands of McPhaden.

21. That the said Referee erred in making his third conclusion of law and in concluding that the issuance of said Twenty-five Thousand Dollars (\$25,000.00) of bonds to the Bank of Montreal was null and void [74] and that the said bonds were unenforceable against said Bankrupt and in failing and refusing to conclude that the said bonds therein referred to were valid and binding upon the said Bankrupt and enforceable.

22. That the said Referee erred in deducing his fourth conclusion and in concluding therein that each and every of the bonds issued by the Washington Steel & Bolt Company was and is a nonnegotiable instrument, and in failing and refusing to conclude that each and every of said bonds was negotiable.

23. That the said Referee erred in making his fifth conclusion of law and in concluding therein that by reason of the reference in each of said bonds to the trust deed or mortgage, the transferees thereof took the same with knowledge of all the terms or conditions of the trust deed or mortgage.

24. That the said Referee erred in making his sixth conclusion of law and in concluding therein that none of the holders of said bonds were *bona fide* holders thereof nor holders thereof in due course, and in failing and refusing to conclude and find that each of the holders of said bonds was *bona fide*

holders thereof for value in *in* due course and without notice of any irregularity or defect.

25. That the said Referee erred in making his seventh conclusion of law and in concluding that each and every of the outstanding bonds of the Washington Steel & Bolt Company is a nullity, and in failing and refusing to find that each and every of the outstanding bonds of the Washington Steel & Bolt Company is a valid and binding obligation upon the said bankrupt and secured by the trust deed in said findings referred to, and that the same is enforceable against the said Bankrupt and that the said security described in the said trust deed is acknowledged holden therefor.

26. That the said Referee failed and neglected to find that the Bank of Montreal loaned to the Washington Steel & Bolt Company in the ordinary course of business, the sum of Twenty-five Thousand [75] Seven Hundred Fifty Dollars (\$25,750.00), and there still remains due and unpaid to said Bank the sum of Twenty Thousand Nine Hundred Ninety-four & 61/100 (\$20,994.61) Dollars principal, and interest of approximately Three Thousand Six Hundred Eleven & 96/100 Dollars (\$3611.96).

27. That the said Referee erred in failing to conclude that there was deposited as security for the payment of said money so loaned to the Washington Steel & Bolt Company Forty-seven Thousand Nine Hundred Dollars (\$47,900.00) as par value of the bonds in said findings referred to, which bonds are numbered as follows:

Nos. 702, 704, 705, 708, to 716, both inclusive; 718 to

732, both inclusive, being 27 bonds of \$1,000 each;

Nos. 661, 663, 667 and 671, both inclusive; 647 to 690, both inclusive, 695 and 699, being 26 bonds of \$500. each;

Nos. 291 to 300, both inclusive, being 10 bonds of \$100 each;

Nos. 665, 662, 672 and 673, being four bonds of \$500 each;

Nos. 703 and 707, being two bonds of \$1,000 each;

Nos. 399 to 407, both inclusive, being 9 bonds of \$100. each;

Nos. 691 to 694, both inclusive, being 4 bonds of \$500. each.

28. That the said Referee erred in failing and refusing to find that interest is in arrears upon each of said bonds from September 1, 1908.

29. That the said Referee erred in failing and refusing to find that C. F. Chapin of Coeur d'Alene, Idaho, was the owner of three bonds numbered 696 to 698 inclusive purchased in 1908 and two bonds purchased April 2, 1909, all five bonds of the par value of \$500.00 each, a total par value of Twenty-five Hundred Dollars (\$2500.00).

30. That the said Referee erred in failing and refusing to find that Mrs. Meta McElroy was the true and lawful owner of bonds numbered 700 and 706, one of the value of One Thousand Dollars (\$1000.) and one of the value of Five Hundred Dollars (\$500.00) purchased on September 26, 1908, and bonds numbered 439, 440, 441, 442, 446, of the par value of One Hundred Dollars each, purchased on June 16, [76] 1909, six semi-annual payments of

interest having been paid on each bond, total par value of which was Two Thousand Dollars (\$2000.00).

31. That the said Referee erred in failing and refusing to find that J. H. Osborne of Chicago, Illinois, was the true and lawful owner of bonds purchased in the fall of 1909, eight bonds being of the par value of Five Hundred Dollars (\$500.00) each and thirty bonds being of the par value of One Hundred Dollars (\$100.00) each, making a total par value of Seven Thousand Dollars, and that interest is in arrears thereon from the first day of September, 1911.

32. That the said Referee erred in failing and refusing to find that Thos. S. Burley is the owner of bonds numbered 443, 444, 445, 498, 499, 500, 701 and 717, purchased September 14, 1908, two of the par value of One Thousand Dollars (\$1000.00) and six bonds of the par value of One Hundred (\$100.00), a total par value of Two Thousand Six Hundred Dollars, and that interest is in arrears thereon from the first day of September, 1912.

33. That the Referee erred in granting Motion to J. W. Russell, attorney for the Trustee, for an order denying the prayer of the petition of the Washington Trust Company.

34. That the said Referee erred in ordering that the prayer of said petition, the Washington Trust Company, be denied and in refusing to enter an order granting the prayer of the said petition.

35. That the said Referee erred in entering an order rejecting and disallowing and expunging from the list of claims upon the record in this case the

claim of the Washington Trust Company.

36. That said Referee erred in refusing to allow said claim according to the prayer and contention of the said Washington Trust Company. [77]

37. That the said Referee erred in adjudging bonds herein referred to binding obligations upon the said Bankrupt and in fixing the amount thereof, and in entering a decree directing the foreclosure thereof.

38. That the said Referee erred in failing and refusing to adjudge that the bonds held by the Bank of Montreal of the par value of Forty-seven Thousand Nine Hundred Dollars (\$47,900.00), which bonds are described as follows:

“Nos. 702, 704, 705, 708 to 716, both inclusive; 718 to 732, both inclusive, being 27 bonds of \$1,000 each;

Nos. 661, 663, 667 to 671, both inclusive; 674 to 690, both inclusive; 695 and 699, being 26 bonds of \$500 each;

Nos. 291 to 300, both inclusive, being 10 bonds of \$100 each;

Nos. 665, 662, 672, and 673, being four bonds of \$500 each;

Nos. 703 and 708, being two bonds of \$1,000 each;

Nos. 399 to 407, both inclusive, being 9 bonds of \$100 each;

Nos. 691 to 694, both inclusive, being four bonds of \$500 each”;

were held by them in good faith for valuable consideration, acquired in the due course of business, and that there was due thereon the sum of Forty-seven

Thousand Nine Hundred Dollars (\$47,900.00), with interest from the first day of September, 1908.

39. That the said Referee erred in failing and refusing to adjudge that the bonds held by C. F. Chapin of Coeur d'Alene, Idaho, and described as follows: Nos. 696 to 698, inclusive, purchased in 1908, and two bonds purchased April 2, 1909, of the par value of Five Hundred Dollars (\$500.00) each, a total par value of Twenty-five Hundred Dollars (\$2500.00) being five bonds in all, were acquired by the said C. F. Chapin in due course for valuable consideration and without notice of any equities existing against them.

40. That the said Referee erred in failing and refusing to adjudge that the bonds held by Mrs. Meta McElroy and described as follows: Nos. 700 to 706, one of the value of One Thousand Dollars [78] (\$1,000.00) and one of the value of Five Hundred Dollars (\$500.00) purchased on September 26, 1908, and bonds numbered 439, 440, 441, 442, 446 of the par value of One Hundred Dollars each purchased on June 16, 1909, six semi-annual payments of interest having been paid on each bond, total par value of which was Two Thousand Dollars (\$2,000.00), being seven bonds in all, were acquired by the said Mrs. Meta McElroy in due course for valuable consideration and without notice of any equities existing against them.

41. That the said Referee erred in failing and refusing to adjudge that the bonds held by J. H. Osborne of Chicago, Ill., and described as follows: Eight bonds of the par value of Five Hundred Dollars (\$500.00) each and thirty bonds of the par value of

One Hundred Dollars (\$100.00) each, purchased in the fall of 1909, of the total par value of Seven Thousand Dollars, with interest in arrears thereon from the first day of September, 1911, were acquired by the said J. H. Osborne in due course, for valuable consideration and without notice of any equities existing against them.

42. That the said Referee erred in failing and refusing to adjudge that the bonds held by Thos. S. Burley and described as follows: Nos. 443, 444, 445, 498, 499, 500, 701 and 717, purchased September 14, 1908, two of the par value of One Thousand Dollars (\$1,000.00) and six bonds of the par value of One Hundred Dollars (\$100.00), a total par value of Two Thousand Six Hundred Dollars (\$2,600.00) with interest in arrears thereon from the first day of September, 1912, were acquired by the said Thos. S. Burley in due course, for valuable consideration and without notice of any equities existing against them.

43. That the said referee erred in failing and refusing to enter a judgment directing the foreclosure of the said mortgage and the sale of all the real property described therein, and all the personal property save and except that executed from the lien by the previous judgment of this Court, and directing the application of proceeds to the payment of the claim of the Washington Trust Company, as represented by said bonds, to the exclusion of all other sums.

44. That the said Referee erred in neglecting and failing to prepare Findings of Fact and Conclusions of Law himself, and in referring the matter of pre-

paring Findings of Fact and Conclusions of Law and decree or judgment to the attorneys for the Bankrupt herein. [79]

WHEREFORE: Your petitioner respectfully prays that this Court review the Findings of Fact, Conclusions of Law and Order and Decree of the Referee, and that this Court proceed to make Findings of Fact, Conclusions of Law, and to enter a decree in accordance with the opinion of the Court heretofore rendered herein, and in accordance with the evidence heretofore taken in this cause and considered by the Referee, and that your petitioner have such other and further relief as this Court may deem consistent with the record as the same is certified to this Court by the said Referee and as the record shall appear, and your petitioner further prays that the said Referee certify to this Court for review all the testimony and matters herein pertaining to said cause, which shall in any way affect the same.

JAMES B. MURPHY,

Attorney for Washington Trust Company. [80]

State of Washington,

County of King:

I, James B. Murphy, Attorney for petitioner, mentioned and described in the foregoing petition, do make solemn oath, and state that the foregoing petition is true according to my best knowledge, information and belief, and further certify that said petition, in my opinion, is well founded in point of law, and that it is not interposed for delay.

JAMES B. MURPHY.

Subscribed and sworn to before me this 27th day of July, 1914.

[Seal]

JNO. R. WILSON,

Notary Public in and for the State of Washington,
Residing at Seattle, County and State Aforesaid.

Due service of the within Petition for Review acknowledged, and a true copy received this 27th day of July, 1914.

J. W. RUSSELL,

Attorney for Trustee.

[Endorsed]: Petition for Review. Filed July 27th, 1914, 2 P. M. John P. Hoyt, Referee. Filed in the U. S. District Court. Jul. 31, 1914. [81]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Stipulation [Re Testimony].

THIS WITNESSETH That it was orally stipulated upon the taking of the testimony in the above matter that all testimony previously taken herein should be considered by the Referee in making his Findings and Conclusions and Order, and that all the testimony heretofore taken upon previous hearings should be considered, together with the testimony taken upon the last hearing.

Dated this 29th day of July, 1914.

J. M. RUSSELL,
Attorney for the Trustee in Bankruptcy.

JAMES B. MURPHY,
Attorney for the Washington Trust Co.

[Indorsed]: Stipulation. Filed July 30th, 1913,
at 10 A. M. John P. Hoyt, Referee. Filed U. S.
District Court Jul. 31, 1914. Frank L. Crosby,
Clerk. [82]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY—No. —.

In the Matter of WASHINGTON STEEL & BOLT
CO., a Corporation,

Bankrupt.

**Petition [of Trustee in Bankruptcy for Order
Directing Sale of Certain Property, etc.]**

The petition of Edward H. Chavelle respectfully
shows and alleges:

I.

That your petitioner was heretofore appointed
trustee in bankruptcy of all the property of the above
bankrupt, and has duly qualified as such by filing
his bond in this court for the faithful performance
of his duties, and is now acting as such trustee.

II.

That your petitioner has taken possession of all
the property of said bankrupt, which includes the
following described real estate and personal estate

located at Edmonds, in the County of Snohomish and State of Washington:

All that certain tract or parcel of land, with the buildings thereon erected, and all machinery connected with or attached to said building and property situated in the Town of Edmonds, County of Snohomish and State of Washington, bounded as follows;

Beginning at the point of intersection of section line between sections Twenty-three (23) and Twenty-six (26), Township Twenty-seven (27) North, Range Three (3) East of W. M., with the center line of the Great Northern Railroad right of way; thence angle west to south 48 degrees, 46 minutes (magnetic course south 40 degrees, 56 minutes west), along the center line of the Great Northern right of way, 339/5 feet; thence angle right 46 degrees, 17 minutes a [83] distance of 69.18 feet to the true place of beginning. Thence same course 395.8; thence angle left 64 degrees, 25 minutes, 290.58 feet; thence angle left 115 degrees, 35 minutes 269.72 feet; thence angle left 46 degrees, 17 minutes 362.5 feet to the place of beginning, containing 2.004 acres, also all the abutting tide lands in front of the above described premises amounting to about six (6) acres or about (8) acres in all, and any other real estate that may be hereafter acquired by said Washington Steel & Bolt Company, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, all buildings, permanent fixtures or mechanical constructions, and all machinery now incorporated into the real estate, or any other building, fixtures or machinery hereafter se-

cured by said Washington Steel and Bolt Company, and placed upon said described real estate, or any real estate hereafter acquired by said Washington Steel & Bolt Company, and all riparian or other rights connected therewith. And upon the same considerations, said Washington Steel & Bolt Company hereby sells, transfers and assigns to said Trustee, and its successors in trust, the personal property of said Washington Steel & Bolt Company, all being situate in or used with said company's plant and bolt factory or shops and any other buildings now situate, and being upon the above described land, or hereafter at any time during the life of this mortgage, that may be placed upon said above-described land or premises, and particularly known as the Washington Steel & Bolt Company's factory and plant, to wit:

One Ajax hot pressed nut machine 16 ton.

One Acme nut tapper 2.

One Acme nut tapper 1.

One Alligator Shear.

One Acme heading and forging machine 1. [84]

One Acme heading and forging machine 2.

One Acme threading machine 2.

One Acme threading machine 1.

One Acme pointing machine.

One 70 h. p. boiler Erie City manufacture.

One 60 h. p. Engine.

\$6,000 worth of dies, in die houses on above described real estate.

One burring machine, water works, hose, electric lights, plant. A complete oil pumping station with heaters, double strainer, together with pipings

and Rockwell oil burners for boiler, and also one three-ton tumbler. Blacksmithing outfit such as vices, anvils, emery stands, tongs, hammers, drills, punches, etc. All leather endless belting and any other belting owned and used by said Washington Steel & Bolt Company in and about its said bolt factory. All pulleys owned by said Washington Steel & Bolt Company used in and about said bolt plant, all of the same being of steel material. All roller bearings for shaftings 120 feet or more long. All office furniture and fixtures among other things including desk, filing cabinet, typewriter, steam-heating apparatus, situate and being in the office of said company, which said office building is now located upon the above-described real estate; together with all and singular the tenements, hereditaments and appurtenances belonging to said property; and the reversion, remainders, tolls, income, rents, issue and profits thereof including all chattels, fixtures, furnishings, machinery, tools, and every other estate, right, title and interest property and other appurtenances of said Washington Steel & Bolt Company, a corporation, bankrupt.

III.

That heretofore, on the —— day of —— 191—, an involuntary petition in bankruptcy was filed herein against the above-named bankrupt, and therefore, and prior to the date of the filing of said [85] petitioner, to wit, on the 1st day of September, 1908, said bankrupt, for and in consideration of the alleged sum of two hundred thousand dollars (\$200,000.00), made and executed and delivered a cer-

tain pretended trust deed or mortgage alleged to cover all the above-described property, to the Washington Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, which said pretended trust deed or mortgage was made for the purpose of securing an issue of two hundred thousand dollars (\$200,000.00) of the bonds of said Washington Steel & Bolt Company.

IV.

That, as your petitioner is informed and verily believes, no bonds were ever regularly issued under said pretended trust deed or mortgage. That certain bonds, amounting in the aggregate to the sum of sixty-four thousand seven hundred dollars (\$64,700.00) are now outstanding and claimed by the holders thereof to be valid. That, as your petitioner is informed and verily believes, a great majority of said outstanding bonds, if not all of them, were issued without consideration, and that the same are absolutely void. That your petitioner's belief as to the invalidity of said outstanding bonds is, in a measure, based upon the testimony of certain of the officers of said bankrupt corporation taken herein before the Referee, which said testimony is hereby referred to and made a part of this petition. That the question of the validity of said outstanding bonds, and each of them, will be litigated by your petitioner, and that such litigation will take a long time. That the care of said property is a burden to your petitioner.

V.

That heretofore and by order of this Court, all of said property heretofore described was duly appraised at the sum of ——— Dollars [86] (\$——) for the personalty, and ——— Dollars (\$——) for the real estate, and your petitioner is informed and does verily believe, that said property, if sold by your petitioner subject to the lien of the mortgage above mentioned will not realize any equity whatsoever by reason of the fact that said property is not worth the amount of said outstanding bonds, and no one interested in property of this character would purchase said property subject to it.

VI.

That your petitioner has examined and caused to be examined several witnesses, to all of which testimony your petitioner upon the hearing of the application herein begs leave to refer and from which said examination the facts as hereinbefore alleged do more particularly and at length appear.

VII.

That your petitioner, in the performance of his duties as said trustee, is desirous of immediately disposing of all the property of the bankrupt herein, and in order to do so most advantageously to the interest of the creditors of the said bankrupt, does verily believe that said property should be sold free of and from the lien of said mortgage, which said mortgage in detail covers all of said property as hereinbefore described, and which was made, executed and delivered on said 1st day of September, 1908, by said Washington Steel & Bolt Company, a cor-

poration, bankrupt herein, for the sum of two hundred thousand dollars (\$200,000.00) and which was thereafter and on the 16th day of September, 1908, at 11:15 o'clock A. M., duly recorded in volume 69 of mortgages, at page 338, in the office of the auditor of Snohomish County, State of Washington.

VIII.

That, in so far as your petitioner has been able to ascertain, the outstanding bonds of the said Washington Steel & Bolt Company [87] are held by the following named persons, firms and corporations, viz.:

Washington Trust Company, Spokane, Washington.

Bank of Montreal, Spokane, Washington.

C. F. Chapin, Coeur d'Alene, Idaho.

R. J. Danson, Spokane, Washington.

J. H. Osborne, Chicago, Ill.

A. McPhaden, c/o A. C. Gunn, Burke Bldg.,
Seattle, Wash.

A. G. Pike, Seattle, Washington.

WHEREFORE, your petitioner respectfully prays for an order herein directing your petitioner as Trustee of the Washington Steel & Bolt Co., to sell according to law, the property mentioned and described in said mortgage and in this petition fully set forth, at public auction in the manner prescribed by the Acts of Congress relating to Bankruptcy and the general orders of the Supreme Court, free of and from the lien of said mortgage, together with such other free or different relief as is meet and equitable in the premises;

And your petitioner will ever pray, etc.

Dated at Seattle, in said District, this 9th day of December, 1913.

EDWARD H. CHAVELLE,
Petitioner.

J. W. RUSSELL,
Attorney for Petitioner.

Postoffice Address, 714 Lowman Building, City of
Seattle, King County, Washington.

State of Washington,
County of King,—ss.

Edward H. Chavelle, being first duly sworn, on oath deposes and says: That he is the petitioner named in the foregoing petition; that he has read the foregoing petition, knows the contents thereof, and the same are true, as he verily believes.

EDWARD H. CHAVELLE. [88]

Subscribed and sworn to before me this 9th day of December, 1913.

[Seal] S. G. CLIMENSON,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Petition. Filed Dec. 10, 1913. 11
a. m. John P. Hoyt, Referee. Filed U. S. Court
July 31, 1914. [89]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

IN BANKRUPTCY—No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY,

Bankrupt.

**Answer to Petition [of Trustee in Bankruptcy for
Order Directing Sale of Certain Property, etc.].**

Comes now the Washington Trust Company and
for answer to the petition filed herein for the sale of
property of said bankrupt corporation denies and
says as follows:

I.

Referring to paragraph III of said petition, this
respondent denies that said mortgage is a pretended
mortgage only, and further controverting said fact
avers that the said mortgage is valid and has been so
decreed to be by the Judge of the above-entitled court
in this proceeding.

II.

Referring to paragraph IV of said petition, this
respondent denies each and every allegation therein
contained, and further controverting said paragraph
avers that all the bonds issued under said trust deed
exceeding the amount named in said paragraph are
valid and binding obligations upon the said bankrupt
and secured by the mortgage in said petition re-
ferred to, and that the said bonds have been adjudged
valid by the above-entitled court; the only question

remaining being the amount due thereon.

III.

Referring to paragraph VII of said petition, respondent [90] denies each and every allegation therein contained.

And for a further affirmative defense to said petition, the Washington Trust Company represents as follows:

I.

That the total value of all the property covered by said mortgage and referred to in said petition does not exceed the sum of Ten thousand (\$10,000) dollars, as your petitioner is informed and verily believes, and that there are valid bonds outstanding secured by the mortgage upon said property, exceeding Sixty-four thousand seven hundred (\$64,700) dollars.

II.

That proceedings are now pending and are at issue, much testimony has been taken and the taking of testimony will soon be concluded in a proceeding instituted by the Washington Trust Company for the foreclosure of said mortgage, and that a decree of foreclosure may be expected within thirty (30) days.

III.

That the mortgagee has the right in bidding upon said property at said foreclosure sale to use, for the purpose of bidding, the bonds which are being foreclosed, and that each bondholder has the right to use his bonds in making his bid; that to have the said property sold on the eve of the entry of a decree of foreclosure would defeat the objects and purpose of

said foreclosure suit and would deprive this respondent and the bondholders of the fruits of their said foreclosure and from the right to use, in bidding at said sale, the mortgage and bonds.

IV.

That the said property has been standing unused for ——— years, and that the same will not deteriorate and will not depreciate in value until the rainy season begins again [91] in the fall.

V.

That the general creditors of the Washington Steel & Bolt Company have no interest or equity in the said lands and premises, because the amount due under said trust deed exceeds the value of all the property covered thereby, and that the less that is obtained for the said property the greater will be the loss to the creditors; that if the said Washington Trust Company is permitted to use the said bonds in said sale a very much larger sum will be realized through the proceeds thereof.

Wherefore, this respondent prays that the petition filed herein by the trustee of the above-named bankrupt for the sale of said property be denied.

JAMES B. MURPHY,

Attorney for Washington Trust Co.

State of Washington,

County of King,—ss.

James B. Murphy, being first duly sworn, on oath deposes and says: That he is the attorney for Washington Trust Company, the respondent named in the foregoing answer, and makes this verification in its behalf for the reason that none of its officers is now

present; that he has read the foregoing answer knows the contents thereof and believes the same to be true.

JAMES B. MURPHY,

Subscribed and sworn to before me this 11th day of April, A. D. 1914.

JNO. R. WILSON,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of the within answer received this 11th day of April, 1914.

J. W. RUSSEL,

Attorney for Trustee.

[Indorsed]: Answer to Petition. Filed April 13, 1914. 2 p. m. John P. Hoyt, Referee. Filed U. S. Court July 31, 1914. [92]

**[Order of Referee Directing Sale of Certain
Property, etc.]**

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL &
BOLT COMPANY, a Corporation,
Bankrupt.

**ORDER DIRECTING SALE FREE AND CLEAR
OF LIENS.**

An order having been heretofore made herein requiring the Washington Trust Company, and all creditors of the above-named bankrupt, to show cause

before this court, at the office of Hon. John P. Hoyt, Referee, why an order should not be made herein, directing that all the property, now in the possession of said Trustee and mentioned and described in the petition filed therefor, be sold in the manner prescribed by the acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, free of and from the lien of the mortgage held by the Washington Trust Company, and free of and from all liens, and why the proceeds arising of and from said sale should not be held by the said Trustee subject to the lien of said mortgage (provided the same was held a valid and subsisting lien), to all intents and purposes as though the said property had not been sold; subject to the final order, judgment and decree of this Court as to the validity, *bona fides* and extent of the said mortgage, and for other and further relief,

Now, upon reading and filing the said order to show cause; and upon the petition of Edward H. Chavelle, Trustee, theretofore filed herein; and upon the petition in bankruptcy herein, the testimony taken under said petition and the answer of the said the Washington Trust Company.

And after hearing counsel for the Trustee in favor thereof, and counsel for said The Washington Trust Company in opposition thereto—the creditors of said bankrupt having appeared and urged the granting of the prayer of said petition—and it appearing to the [93] satisfaction of this Court that the best interests of the creditors of the said bankrupt above-named will be subserved by the granting of said ap-

plication, and for divers other reasons that the said application is proper, it is hereby

ORDERED, ADJUDGED and DECREED that Edward H. Chavelle, as Trustee of Washington Steel & Bolt Company, Bankrupt, be, and hereby is authorized, directed and permitted to sell and dispose of, in the manner and mode prescribed by the acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, all of the property of the Washington Steel & Bolt Company, bankrupt, situate and located at Edmonds, Snohomish County, Washington, and more particularly described in a certain indenture of mortgage heretofore made by Washington Steel & Bolt Company to the Washington Trust Company to secure an issue of \$200,000 of bonds, dated September 1, 1908, and recorded on the — day of September, 1908, in Book — of Mortgages at page —, in the office of the Auditor of Snohomish County, Washington.

And it further Ordered, Adjudged and Decreed that the said Edward H. Chavelle, as Trustee, be, and he thereby is authorized, directed and permitted to sell and dispose of the said property in said mortgage more particularly mentioned and described, free of and from the lien thereof, and that the proceeds arising from the sale of said property be held by the said Trustee subject to the lien of said mortgage, as if said property had not been sold, subject to the final order, judgment and decree of this Court adjudicating the validity, *bona fides* and extent of the said mortgage.

Dated July 28, 1914.

JOHN P. HOYT,
Referee in Bankruptcy.

Receipt of a copy and due service hereof admitted this 28th day of July 1914.

JAMES B. MURPHY, M. B. S.

Attorney for Petitioner.

[Endorsed]: Order directing sale free and clear of liens. Filed July 28, 1914, at 2 o'clock P. M. John P. Hoyt, Referee. Filed in the U. S. District Court, Western District of Washington, Jul. 31, 1914. Frank L. Crosby, Clerk. [94]

**[Petition of Washington Trust Co. for Review of
Order of Referee in Bankruptcy of July 28, 1914.]**

*In the District Court of the United States, in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY, a Corporation,
Bankrupt,

PETITION FOR REVIEW.

To the Honorable Referee in Bankruptcy:

COMES NOW your petitioner, the Washington Trust Company, and feeling itself aggrieved by the order entered herein on the 28th day of July, 1914, directing and authorizing the Trustee in Bankruptcy to sell the property of the above-entitled Bankrupt free and clear of the encumbrance of the mortgage or trust deed executed by the Washington Steel & Bolt Company to the Washington Trust Company, under date of September 1, 1908, which deed was delivered on September 9, 1908, hereby petitions for a review

of the whole and every part of said order and all matters touching or concerning the same, and as grounds for review your petitioner respectfully represents as follows:

I.

That the Referee in Bankruptcy erred in reciting that the creditors of said Bankrupt appeared and urged the granting of the prayer of the petition of the trustee in Bankruptcy for the sale of said property.

II.

That the said Referee in Bankruptcy erred in reciting that it appeared satisfactorily to the court that the best interests of the creditors of the said Bankrupt would be subserved by the granting of said petition to sell said property. [95]

III.

That the said Referee in Bankruptcy erred in ordering, adjudging and decreeing that the Bankrupt be authorized and directed and permitted to sell and dispose of the property of the Washington Steel & Bolt Company located at Edmonds, more particularly described in the said trust deed and mortgage.

IV.

That the said Referee in Bankruptcy erred in ordering, adjudging and decreeing that Edward H. Chavelle, as Trustee of the said bankrupt and its estate, be authorized and directed and permitted to sell and dispose of said property free from any lien of the mortgage and trust deed herein referred to, and directing that the said lien, if any there be, attach to the proceeds of said sale.

V.

That the said Referee in Bankruptcy erred in denying the prayer of the said petitioner for the sale of the property.

VI.

That the said Referee in Bankruptcy erred in passing upon said petition before the validity of said mortgage was finally determined, thus prejudicing the rights of the mortgagee in bidding at said sale and denying it the fruits of its recovery if the mortgage and bonds were found valid.

WHEREFORE, your petitioner prays that the Honorable Referee in Bankruptcy certify to the above-entitled court for review the testimony, matters and things pertaining to and relating to the hearing of the said petition for the sale of said property, and that the court review the same and reverse said order, and that your *petitioner* have such other and further relief as the court may deem meet and equitable.

JAMES B. MURPHY,

Attorney for Washington Trust Company. [96]

State of Washington,

County of King,—ss.

James B. Murphy, attorney for the above-entitled petitioner named in the foregoing petition, does make solemn oath and states that the foregoing petition is true according to his best knowledge and information, and believes and further certifies that said petition, in his opinion, is well founded in point of law and that it is not interposed for delay.

JAMES B. MURPHY,

Subscribed and sworn to before me this 30th day of July, 1914.

[Seal]

W. D. LANE,
Notary Public in and for the State of Washington,
Residing at Seattle, County and State Aforesaid.

[Endorsed]: Petition for Review. Filed July 31st, 1914, 9 A. M. John P. Hoyt, Referee. Filed July 31, 1914. U. S. District Court. [97]

[Opinion of Neterer, D. J., Filed September 5, 1914.]

*United States District Court, Western District of
Washington, Northern Division.*

No. 4717.

In the Matter of the WASHINGTON STEEL &
BOLT COMPANY,

Bankrupt,

Filed Sept. 15, 1914.

ON PETITION TO REVIEW ORDER OF
REFEREE, ORDER MODIFIED.

James B. Murphy, For Petitioner.

J. W. Russel, For Trustee.

NETERER, District Judge:

This case has been before the Court on two or three prior occasions, and the last hearing was upon a petition to review the order of the Referee in which he held the mortgage in issue to be invalid. The court reversed the order of the Referee and held the mortgage valid because it was regularly signed by the Secretary and President of the corporation and authenticated by the corporate seal which was affixed,

and its execution was admitted by the trustee. As to the issuance of the bonds, the Court expressed some view of the bonds under the testimony submitted, but said:

“I am unable to determine from the testimony the amount of the bonds that were legally issued,” and remanded the same to the Referee, with instructions,

“to ascertain the amount and status of all bonds and report to the Court, to the end that all parties may receive equal protection.”

The testimony has been submitted to the Referee by all contending parties as to the legal status of the bonds. Upon the conclusion of the hearing, the Referee held that none of the bonds had been legally issued; that they were invalid and therefore not claims against the bankrupt estate, and also entered an order directing the property to be sold free and clear of all indebtedness. This order and the order [98] holding the bonds invalid, are before the court at this time.

From a consideration of all of the evidence presented I am of the opinion that \$23,400.00 of bonds issued to McPhaden, and the \$2,900.00 of bonds issued to Pike, issued for past indebtedness to Pike and McPhaden for monies advanced by them to the corporation long prior to the date of the bonds, and transferred to the Bank of Montreal as collateral security for money paid to the company, are liabilities to the extent of the advances. There were also regularly issued: to C. F. Chapin, \$2,500.00; Meta McElroy, \$2,000.00; J. H. Osborne, \$5,900.00; and

Thomas S. Burley, \$2,600.00. The bonds issued to these last-named parties were upon considerations paid by these several parties to McPhaden who paid that money to the Washington Steel & Bolt Company which he was representing, and it was used by this company in the regular course of business, and all benefits arising from such payments accrued to the corporation. These several parties having thus paid their money upon the faith and credit of these bonds and the mortgage, should not now be deprived of the benefits accruing by reason of such security, after the corporation had used their money, some of which, perhaps, now representing some of the assets. The contention that the bonds are void because of the fact that a commission was paid to the person negotiating the bonds cannot be well founded as against the parties who paid ninety-five cents on the dollar, which the testimony shows these several parties did, except as to the bank holding the bonds issued to McPhaden and Pike as collateral security.

The \$25,000.00 bonds issued to the Bank of Montreal as collateral security, I do not think are a valid claim. The bonds were delivered without any authority, either fact [99] or law. There is no testimony before the Court that the delivery of these bonds was ever authorized in a legal manner, and if a proper resolution had been passed, the authority under which the bonds were executed did not comprehend the issuance of bonds for any such purpose.

I think the findings and conclusions of the Referee should be modified in so far as they relate to the \$23,400.00 of bonds issued to McPhaden, and the

bonds issued to C. F. Chapin, Meta McElroy, J. H. Osborne, Thomas S. Burley and Pike. I think that the property should be sold, and the proceeds applied to the payment of the claims of the Bank of Montreal, to the extent of its interest in the McPhaden and Pike bonds held as collateral, and also the bonds of Chapin, McElroy, Osborne and Burley, less such proportion of the expenses as should be paid by said interests in this bankruptcy proceeding, and the balance, if any, less expenses of administration, to be distributed among the general creditors, as provided by the Bankruptcy Act.

Let an order be presented.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Sep. 15, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [100]

[Order Modifying Order of Referee of July 20, 1914, etc.].

In the United States District Court for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

ORDER ON REVIEW FROM ORDER OF
REFeree.

This matter having been brought before the refe-

ree by the petition of The Washington Trust Company for leave to foreclose a certain mortgage, executed by the bankrupt, outside of the bankruptcy court; and therefore having granted leave to so foreclose upon terms; and the petitioner, The Washington Trust Company, having taken a review from said order; and this Court having reversed said order, directed the mortgage, if valid, to be foreclosed in the bankruptcy court, and send the matter back to the referee to take proofs as to the validity of said mortgage and the bonds issued thereunder; and proofs having been offered before the referee as to the validity of said mortgage, but not as to the validity of said bonds; and said referee having made and entered an order declaring said mortgage invalid; and the petitioner, The Washington Trust Company, having taken a review from said order to this court; and this court having held said mortgage valid, reversed said order; and sent the matter back to the Referee to take proof as to the validity of said bonds, and to make findings and conclusions thereon; and said Referee having taken such proofs, and having made findings and conclusions thereon, and having made and entered an order on the 20th day of July, 1914, declaring all of said bonds invalid, and rejecting, disallowing and expunging the claim of the petitioner, the Washington Trust Company, based thereon, from the records; and said petitioner having filed exceptions to said findings and conclusions, and having taken a review from said order to this Court; and the matters raised by said review having been heard and considered by this court.

IT IS ORDERED that said report and order of July 20, 1914, be, and the same hereby is, modified to the extent of holding that \$1,000 of the bonds held by C. F. Chapin, and the \$2,000 of bonds held by Meta [101] McElroy, and the \$7,000 of bonds held by J. H. Osborne are valid, and as so modified said order is hereby confirmed.

The trustee in bankruptcy duly excepts to such modification, and his exception is hereby allowed.

And the property covered by said mortgage having been ordered sold free and clear from the lien thereof.

IT IS HEREBY FURTHER ORDERED that the proceeds thereof be paid to Washington Trust Co. on account of the claims of said Chapin, McElroy and Osborne, less such proportion of the expenses and costs as should be paid by said interests in this proceeding, and that the balance thereof, if any, less expenses of administration, be distributed among the creditors, as provided by the Act.

Oct. 16, 1914.

JEREMIAH NETERER,

Judge.

Receipt of a copy and due service hereof admitted this 14th day of October, 1914.

JAMES B. MURPHY,

Attorney for Petitioner.

[Indorsed]: Order on Review from Referee's Order. Filed in the United States District Court, Western District of Washington, Oct. 16, 1914, *Oct. 16, 1914*. Frank L. Crosby, Clerk. By B. E. S., Deputy. [102]

**[Order Confirming Order of Referee of July 28, 1914,
etc.].**

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**ORDER ON REVIEW FROM REFEREE'S
ORDER.**

This matter having been brought before the referee upon the petition of the Trustee for leave to sell the property of the bankrupt estate free and clear from the mortgage thereon; and the Referee having made and entered an order on the 28th day of July, 1914, granting leave to the Trustee to so sell said property free and clear; and the Washington Trust Company having taken a review from said order to this Court; and the matters raised by said review having been heard and considered by this Court.

IT IS ORDERED that said order of the referee be, and the same is, hereby confirmed.

And it is hereby further ORDERED that no bid for said property be accepted until its acceptance is authorized by this court.

Oct. 16, 1914.

JEREMIAH NETERER,
Judge.

Receipt of a copy and due service hereof admitted this 14th day of October, 1914.

JAS. B. MURPHY,
Attorney for Petitioner.

[Indorsed]: Filed in the United States District Court, Western District of Washington. Oct. 16, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [103]

**[Form of Decree Proposed by Washington Trust Co.
and Refusal of Court to Sign Proposed Decree,
etc.].**

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

**PROPOSED DECREE AND REFUSAL OF
COURT TO SIGN SAME.**

THE WASHINGTON TRUST COMPANY requests the incorporation in the Order of the Court, each (severally), of the following provisions:

This matter having been presented to this Court, upon the petition to review the Findings and Conclusions and Judgment of the Referee in passing upon the validity of the bonds issued by the Washington Steel & Bolt Company, which judgment was entered by the Referee on July 20, 1914, and upon petition for the review of the Order of the Referee

on July 28, 1914, made herein, directing a sale of the mortgaged property for cash, free and clear of the encumbrance of said mortgage, and the Court having duly considered the said petitions and the arguments made in support thereof, and becoming fully advised in the premises; Now, therefore,

1. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the said Findings made by the Referee herein, and the whole of said Findings, as well as the Conclusions deduced therefrom, be and the same are overruled, vacated and set aside, and

2. IT IS FURTHER ORDERED, ADJUDGED and DECREED that said Order and Judgment, and the whole thereof, entered herein by the said Referee, holding that the bonds issued by the above Bankrupt were void and of no effect, and denying the prayer of the Washington Trust Company, and holding that the claim of the Washington Trust Company be rejected and disallowed and expunged from the list [104] of claims, which order was entered on July 20, 1914, be and the same is hereby vacated and set aside, and

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order entered herein on July 28, 1914, by the said Referee directing and ordering a sale of the property of the Washington Steel & Bolt Company for cash, free and clear of the encumbrance of said mortgage, be and the same is hereby overruled and set aside.

4. IT IS FURTHER ORDERED, ADJUDGED and DECREED that those certain bonds filed as exhibits herein on behalf of the Bank of Montreal and

numbered 661 and 663, 667 to 671, each inclusive; 674 to 690, each inclusive; 695 and 699, being twenty-six (26) bonds of the denomination of \$500.00 each and of the total par value of \$13,000.00; bonds numbered 702 and 704, being two bonds of the denomination of \$1,000.00 each, making a total par value of \$2,000.00; bonds numbered 291 to 300, each inclusive, being ten bonds of the denomination of \$100.00 each, making a total par value of \$1,000.00; bonds numbered 399 to 407, each inclusive, being nine bonds of the denomination of \$100.00 each, making a total par value of \$900.00; bonds numbered 691 to 694, each inclusive, being four bonds of the denomination of \$500.00 each, making a total par value of \$2,000.00; bonds numbered 665, 666, 672, 673, being four bonds of the denomination of \$500.00 each, making a total of \$2,000.00; bonds numbered 703 and 707 being two bonds of the denomination of \$1,000.00 each, making a total par value of \$2,000.00, all of which bonds are held by the Bank of Montreal and are of the total par value of \$22,900.00, are, as to the Bank of Montreal, valid and existing obligations of the Washington Steel & Bolt Company, and secured by the trust deed hereinafter described to the extent of the money due from the Washington Steel & Bolt Company to the Bank of Montreal, a corporation. [105]

5. IT IS FURTHER ORDERED, ADJUDGED and DECREED, for the apportionment and distribution of the property or proceeds of the sale hereinafter provided for as between the holders of bonds, that the bonds held by the Bank of Montreal rep-

resent an indebtedness, including interest, of \$31,012.66.

6. IT IS FURTHER ORDERED, ADJUDGED and DECREED that those certain bonds in the possession of the Bank of Montreal issued by the Washington Steel & Bolt Company and numbered 705, 708 to 716, each inclusive, and 718 to 732, each inclusive, making 25 bonds each of the denomination of \$1,000.00, making a total par value of the sum of \$25,000.00, which bonds are those delivered direct by the Washington Steel & Bolt Company to said bank, are valid and existing obligations of the Washington Steel & Bolt Company as security for the indebtedness of said Washington Steel & Bolt Company to said Bank of Montreal.

7. IT IS FURTHER ORDERED, ADJUDGED and DECREED, for the purpose of apportioning the proceeds of said sale among the Bank of Montreal and the owners of the other bonds, that the said bonds last hereinbefore described shall be estimated at their face value of \$25,000.00 and accrued interest amounting to the sum of \$——.

8. IT IS FURTHER ORDERED, ADJUDGED and DECREED that there is now due and owing from the Washington Steel & Bolt Company to the Bank of Montreal the full and just sum of \$20,000.00, together with the interest thereon at the rate of eight per cent (8%), per annum from the 23d day of December, 1910, making a total to this date of principal and interest of the sum of \$26,033.30, and that the said indebtedness is secured by the bonds hereinbefore mentioned and held to be valid.

9. IT IS FURTHER ORDERED, CONSIDERED AND DECREED that J. H. Osborne is the owner of the following bonds of said issue, which bonds are upon file as exhibits herein; numbers 410 to 438, each inclusive, being 29 bonds of the denomination of \$100.00 each, making a total par value of \$2,900.00; bonds numbered 655 [106] to 660, each inclusive, being six bonds of the denomination of \$500.00 each, making a total par value of \$3,000.00, bond numbered 409 of the denomination of \$100.00, bonds numbered 653 and 654 of the denomination of \$500.00 each, making a total par value of \$1,100.00, making a grand par value total of \$7,000.00; that interest has been paid on the bonds held by the said Osborne as aforesaid to the first day of March, 1912, and to no later date, and that there is now due and owing to the said Osborne, represented by said bonds, the sum of \$7,000.00, together with interest thereon at the rate of 8% per annum from the first day of March, 1912, making a total to this date of principal and interest of the sum of \$8,446.17.

10. IT IS FURTHER ORDERED, ADJUDGED and DECREED that C. F. Chapin is the owner of the following described bonds of said issue, to wit: bonds numbered 696 to 698, each inclusive, being three bonds of the denomination of \$500.00 each and representing a total par value of \$1,500.00, and bonds numbered 662 and 664, being two bonds of the denomination of \$500.00 each, totaling \$1,000, and making a grand total of \$2,500.00, that interest on said bonds belonging to the said Chapin has been paid to September 1, 1911, and to no later date, and

that there is now due and owing on account of said bonds to the said Chapin from the said Washington Steel & Bolt Company the sum of \$2,500.00, together with interest thereon at the rate of eight per cent (8%) per annum from the first day of September, 1911, making a total due to the said Chapin on this date of the sum of \$3,116.66.

11. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that Meta McElroy is the owner of the following bonds of said issue, to wit: bond numbered 700 of the par value of \$500.00, bond numbered 706 of the par value of \$1,000.00, bonds numbered 439 to 442, each inclusive, being four bonds of the par value of \$100.00 each, making a total of \$400.00, and bond numbered 446 of the par [107] value of \$100.00, making a grand total of \$2,000.00, and that there is now due and owing from the said Washington Steel & Bolt Company to the said Meta McElroy, on account of the execution and delivery of the said bonds, the sum of \$2,000.00, together with the interest thereon at the rate of eight per cent (8%) per annum from the first day of September, 1911, making a total due to the said Meta McElroy on this date of the sum of \$2,493.33.

12. IT IS FURTHER ORDERED, ADJUDGED and DECREED that Thomas S. Burley is the owner of the following bonds of said issue, to wit; bonds numbered 443 to 445, each inclusive, being three bonds of the par value of \$100.00 each, totaling \$300.00, and bonds 498 to 500, each inclusive, being three bonds of the par value of \$100.00 each, totaling

\$300.00, and bonds 701 and 717, being two bonds of the par value of \$1,000.00 each, totaling \$2,000.00, making a grand total of \$2,600.00 par value, that interest has been paid upon said bonds to the first day of September, 1911, and to no later date, and that there is now due and owing the said Burley from the said Washington Steel & Bolt Company, on account of the execution and delivery of the said bonds, the sum of \$2,600.00, with interest thereon, at the rate of eight per cent (8%) per annum from the first day of September, 1911, making the sum due at this date of \$3,241.33.

13. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by the bank of Montreal, and particularly described in Paragraph 4 hereof, are hereby established as a valid, existing obligation of the said Washington Steel and Bolt Company, and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at Page 388, Record of Mortgages of said Snohomish County.

14. IT IS FURTHER ORDERED, ADJUDGED and DECREED THAT THE [108] bonds held by the Bank of Montreal, and particularly described in Paragraph 6 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid,

signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at Page 388, Record of Mortgages of said Snohomish County.

15. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by J. H. Osborne, and particularly described in Paragraph 9 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages at Page 388, Record of Mortgages of said Snohomish County.

16. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by C. F. Chapin, and particularly described in Paragraph 10 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at Page 388, Record of Mortgages of said Snohomish County.

17. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by Meta McElroy, and particularly described in Paragraph 11 hereof, are hereby established as a valid, existing [109] obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at Page 388, Record of Mortgages of said Snohomish County.

18a. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the bonds held by Thomas S. Burley, and particularly described in Paragraph 12 hereof, are hereby established as a valid, existing obligation of the said Washington Steel & Bolt Company and secured by that certain trust deed and mortgage hereinbefore held valid, signed by the Washington Steel & Bolt Company under date of September 1, 1908, and acknowledged under date of September 9, 1908, and recorded in the Auditor's office of Snohomish County, State of Washington, in Volume 69 of Mortgages, at Page 388, Record of Mortgages of said Snohomish County.

18b. IT IS FURTHER ORDERED, CONSIDERED and ADJUDGED that the Trustee must elect whether he will administer the equity of redemption in the property for the benefit of general creditors or surrender the mortgaged property for foreclosure.

If the Court refuses to incorporate 18b in its Order,

we further, without prejudice to urging our right to have said paragraph inserted, propose the incorporation of the following:

19. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the personal property referred to herein, particularly described as follows, to wit:

One *Agax* Pressed nut machine 16 ton.

One Acme nut tapper 2.

One Acme nut tapper 1.

One Aligator Shear.

One Acme heading and forging machine 1.

One Acme heading and forging machine 2.

One Acme threading machine 2.

One Acme threading machine 1.

One Acme pointing machine.

One 70 H.P. boiler Erie City manufacture.

One 60 H. P. engine.

\$6,000.00 worth of dies, in die houses on below described real estate. One Burring machine. Waterworks, hose, electric light plant. A complete oil pumping station with heaters, double strainer, together with pipings and Rockwell oil burners for boiler, and also one three ton tumbler. Blacksmithing outfit such as vises, anvils, emery stands, tongs, hammers, drills, punches, etc. All leather endless belting, and any other belting owned and used by said Washington Steel & Bolt Company in and about its said bolt factory. All pulleys owned by said Washington Steel & Bolt Company used in and about said bolt plant, all of the same being of steel material. All roller bearings for shaftings 120 feet or more long. All office furniture [110] and fixtures,

among other things, including desk, filing cabinet, typewriter, steam heating apparatus, situate and being in the office of said company, which said office building is now located upon the above-described real estate.

Two hot blast furnaces. One oil tank, capacity 500 barrels. Platform scales. Also one United States patent known as the Climo Rail Joint Patent #755848, issued on the 29th of March, 1904, together with all rights and privileges thereto connected or in anywise belonging, also one United States Patent #740257, known as the Owen-Shaw Nut and Bolt Locks, together with all rights and privileges thereto belonging.

And all other personal property of every name and nature now owned and possessed by the Washington Steel & Bolt Company except the cash which is in the hands of the Trustee in Bankruptcy as proceeds of the sale of certain manufactured stock and raw material.

And the real property herein referred to, situated in Snohomish County, State of Washington, and particularly described as follows:

“Beginning at the point of intersection of section line between sections twenty-three (23) and twenty-six (26), Township twenty-seven (27) North, Range Three (3) East of W. M., with the center line of the Great Northern Railroad right of way; thence angle west to south 48 degrees 46 minutes (magnetic course south 40 degrees 56 minutes west), along the center line of the Great Northern right of way, 339.5 feet; thence angle right 46 degrees 17 minutes a distance

of 69.18 feet to the true place of beginning. Thence same course 395.8 feet. Thence angle left 64 degrees, 25 minutes, 290.58 feet; thence angle left 115 degrees 33 minutes 362.5 feet to the place of beginning, containing 2.004 acres, also all the abutting tide lands in front of the above described premises amounting to about six (6) acres, or about eight (8) acres in all, situated in the County of Snohomish, State of Washington."

"Beginning at a point on the westerly line of the right of way of the Seattle & Montana Railway Right of Way 852 feet south of the intersection of said Right of Way and the south line of Section Twenty-three (23) Township Twenty-seven (27) North Range Three (3) East and running thence north (250) two hundred fifty feet; thence S. 87 degrees 13' W. to the shore of Puget Sound. Thence southerly along the shore of Puget Sound to a point bearing S. 87 degrees 13' W. of the place of beginning; thence N. 87 degrees 13' E. to the place of beginning, being a strip of land 250 feet in length North and South along said Right of Way and extending to the shore of Puget Sound.

Also all that portion of tideland Lot No. 1 in front of Section 26, Tp. 27, R. 3 E. in front of the town of Edmonds and more particularly described as follows: The first class tidelands lying in front of the following described upland; Beginning at a point on the westerly line of the right of way of the Seattle and Montana Railway right of way 952 feet south of the intersection of said right of way and the south line of Sec. 23, Tp. 27, N. R. 3 E. and running

thence North 250 feet; thence south 87 degrees 13' W. to the shore of Puget Sound; thence southerly along the shore of Puget Sound to a point bearing S. 87 degrees 13' W from the place of beginning, ~~being a strip of land 250 feet in length~~ thence N. 87 degrees 13' east to the place of beginning, being a strip of land 250 feet in length north and south along said right of way. Said portion of tideland Lot No. 1 being bounded by the Government Meander Line and the [111] river Harbor line and the N. and S. boundary line of above upland description produced out in the same direction to the river harbor line containing 0.99 acre more or less, according to the official map on file in the office of the Commissioner of Public Lands at Olympia, Washington."

and all other real property or interest in real property which the said Washington Steel & Bolt Company owns, be sold by the Trustee in Bankruptcy in accordance with the practice of this Court, and that the proceeds of said sale shall be applied, first to such portion of the expenses in this bankruptcy proceeding as should be paid by the holders of the said bonds, then in payment of the proper charges of said Washington Trust Company, and then to the satisfaction of the bonds held by the Bank of Montreal to the extent of the indebtedness of the Washington Steel & Bolt Company as adjudged herein and to the payment and satisfaction of the bonds held by the said Osborne, Chapin, McElroy and Burley, paying proportionately on all valid bonds.

20. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that any balance remaining after the application of the proceeds of said sale, as set out in the preceding paragraph, shall be paid to A. McPhaden and A. G. Pike, according to their respective interests in the bonds held by the Bank of Montreal.

21. IT IS FURTHER ORDERED, CONSIDERED, ADJUDGED and DECREED that any holder or holders of the bonds or coupons secured by this mortgage, according to the terms of this decree, if successful as bidder or bidders at said sale, may, after first paying in enough to cover all proper and lawful charges and demands which may be made by the Trustee, the Washington Trust Company, including its compensation and the compensation of its attorneys, and also paying in such portion of the expenses of this bankruptcy proceeding as should be paid by the holders of said bonds, use such bonds and coupons to apply toward the payment of the purchase money, reckoning and computing the said bonds and coupons at a sum equal to and not exceeding that which would be payable to such bondholder or holders as such out of the net proceeds of such sale if made [112] for cash.

22. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Washington Trust Company may, as trustee for the holders of said bonds, with their consent, after first paying in money sufficient to cover such portion of the expenses of this bankruptcy proceeding as should be paid by the bondholders, become a bidder at said sale and may

use, in making settlement for and in payment of the purchase money to account to the Trustee in Bankruptcy, any and all of the bonds or coupons secured by said mortgage and held valid by this decree, and may use and apply the same in and toward the payment of the purchase money reckoning and computing said bonds and coupons at a sum equal to and not exceeding that which would be payable out of the net proceeds of said sale, were the purchase price paid in cash, to the holders of such used bonds.

23. IT IS FURTHER ORDERED, ADJUDGED and DECREED, inasmuch as the proper portion of the expenses of this bankruptcy proceeding to be paid by the holders of the bonds is not ascertained, or fixed, that all bidders at said sale should be required to pay the sum of \$——, portion of the bid to cover any and all possible proper charges and expenses, and any amount remaining of said sum not used in the payment of proper charges and expenses, shall be applied as other parts of the bid are directed to be applied according to the terms of this decree, and in the event that the successful bidder is some one other than the Washington Trust Company and a holder of bonds, such bidder shall pay in, at least, the sum of \$—— in cash to cover the lawful charges, including compensation and compensation of its attorneys, of the said Washington Trust Company.

DONE in open court this —— day of October, 1914.

Judge. [113]

The provisions of the foregoing Order or Decree were, at the time of the signing of the Order herein pertaining to this subject matter, separately presented to the Court, and a separate request was made as to each provision hereof, to have it embodied in the Order, and that the Court considered separately each of the foregoing provisions and declined to embody each or any thereof in its Decree or Order and the attorney for the Washington Trust Company duly and at the time excepted to the Court's refusal so to do as to each paragraph and provision and excepted to the Court's refusal to embody Paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and his exceptions as to each paragraph or provision is hereby allowed.

DONE in open court this 16th day of October, 1914.

JEREMIAH NETERER,

Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington. Oct. 16, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy.
[114]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Exceptions [of Washington Trust Co. to Approval of Findings and Report of Referee.]

COMES NOW the Washington Trust Company, by its Attorney, the undersigned, at the time of the signing of the Order by the above-entitled court, passing upon the Petition of said Washington Trust Company, reviewing the Findings and Report of the Referee in this matter, which Findings and Report were made by the Referee on July 20, 1914, and excepts to the Court's ruling as follows:

I.

The Washington Trust Company excepts to the Court's refusal to sustain its exception and objection made to Finding I of said Referee.

II.

The Washington Trust Company excepts to the refusal of the Court to sustain its exception to Finding V of said Referee and the whole and every part thereof.

III.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exceptions and objection to Finding VI of the Referee.

IV.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exceptions and objection to Finding VII made by said Referee.
[115]

V.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception

to Finding VIII made by said Referee.

VI.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding IX made by said Referee.

VII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XI made by said Referee.

VIII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XII made by said Referee.

IX.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XIII made by said Referee.

X.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XIV made by said Referee.

XI.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XV made by said Referee.

XII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception to Finding XVI made by said Referee. [116]

XIII.

The Washington Trust Company excepts to the Court's refusal to specifically sustain its exception

to Finding XVII made by said Referee.

XIV.

The Washington Trust Company excepts to the refusal of the Court to sustain each and every exception and objection made and contained in the Petition of the Washington Trust Company for the review of the Report of the Referee made on July 20, 1914, and the order of the Referee during the sale of the property made by said Referee on July 28, 1914.

XV.

The Washington Trust Company excepts to the whole and every part of the order entered by the above-entitled court on the 16th day of October, 1914, and specifically to that part of said order wherein and whereby the Court confirms the report and order of the said Referee, which it reviewed, except as in said order modified.

XVI.

The said Washington Trust Company further excepts to that part of the order directing the proceeds of the sale to be applied upon the claims of Chapin, McElroy and Osborne, omitting any claims which the Washington Trust Company may have for its services as trustee, and its costs and commissions and expenses in the prosecution in the above-entitled action.

XVII.

The said Washington Trust Company excepts to that portion of said decree subjecting the proceeds of the sale of said property to a portion of the expenses and costs of the said Bankruptcy proceed-

ings and excepts to every part of said order directing the sale of the said property. [117]

XVIII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion I made by said Referee.

XIX.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion II made by said Referee.

XX.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion III made by said Referee.

XXI.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion IV made by said Referee.

XXII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion V made by said Referee.

XXIII.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion VI made by said Referee.

XXIV.

The Washington Trust Company further excepts to the Court's refusal to specifically sustain its objections and exceptions to Conclusion VII made by said Referee.

JAMES B. MURPHY,
Attorney for Washington Trust Company. [118]

The foregoing exceptions were, at the time of the signing of the Order herein, considered by the Court, and said exceptions were allowed.

Oct. 16, 1914.

JEREMIAH NETERER,
Judge.

[Endorsed]: Exceptions. Filed in the United States District Court, Western District of Washington. Oct. 16, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [119]

In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Exceptions [of Washington Trust Co. to Order
Confirming Order of Referee Re Sale of Prop-
erty, etc.].**

COMES NOW the Washington Trust Company, as Trustee, and hereby excepts to the Order entered by the above-entitled court this day, wherein said court

confirmed the Order of the Referee directing a sale of the property involved in the above-entitled proceeding, and further excepts to the whole and every part of said Order.

JAMES B. MURPHY,

Attorney for Washington Trust Company.

The foregoing Exception was duly presented and taken at that time of the signing of the Order herein referred to, and the exceptions allowed.

Dated this 16th day of October, 1914.

JEREMIAH NETERER,

Judge.

[Endorsed]: Exceptions. Filed in the United States District Court, Western District of Washington. Oct. 16, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [120]

[Petition for and Order Allowing Appeal of Trustee.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

PETITION FOR APPEAL AND ORDER AL-
LOWING APPEAL.

The Trustee of the above-named bankrupt, Edward H. Chavelle, considering himself as such trustee, and the estate of said bankrupt, aggrieved by so much of the final order and judgment herein, made and en-

tered herein on the 16th day of October, 1914, as modifies the report and order made by the referee herein on the 20th day of July, 1914, to the extent of holding that \$10,000 of the bonds issued by the Washington Steel & Bolt Company, the above-named bankrupt, viz.: \$1,000 of those held by C. F. Chapin; the \$2,000 held by Meta McElroy; and the \$7,000 alleged to be held by J. H. Osborne, are valid, does hereby appeal from that portion of said final order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that this, his petition for appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said final order and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 26, 1914.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

The foregoing petition for appeal is granted, and the appeal allowed.

Dated October 26, 1914.

JEREMIAH NETERER,

United States District Judge for Said District and Division. [121]

I hereby accept due and timely service of the foregoing petition for appeal this 26th day of October, 1914.

JAMES B. MURPHY,

Attorney for Petitioner, The Washington Trust Company.

[Endorsed]: Petition for Appeal and Order Allowing Appeal. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S. Deputy.
[122]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Assignment of Errors [of Trustee.]

The trustee of the above-named bankrupt, by J. W. Russell, his attorney, makes and files the following assignment of errors, in connection with his petition for appeal herein, dated October 26, 1914, and alleges that so much of the final order and judgment herein, entered on the 16th day of October, 1914, as modifies the report and order made by the referee herein on the 20th day of July, 1914, by holding and deciding that \$10,000 of the bonds issued by said bankrupt, viz.: \$1,000 of those held by C. F. Chapin; the \$2,000 held by Meta McElroy; and the \$7,000 alleged to be held by J. H. Osborne, are valid, is erroneous in the following particulars, to wit:

I.

The Court erred in holding and adjudging that any of the bonds issued by said bankrupt are valid.

II.

The Court erred in holding and adjudging that \$1,000 of the bonds issued by said bankrupt, and held by C. F. Chapin, are valid.

III.

The Court erred in holding and adjudging that the \$2,000 of the bonds issued by said bankrupt, and held by Meta McElroy, are valid.

IV.

The Court erred in holding and adjudging that \$7,000 of the bonds issued by said bankrupt, and alleged to be held by J. H. Osborne, are valid. [123]

Dated October 26, 1914.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

I hereby accept due and timely service of the foregoing Assignment of Errors.

Dated October 26, 1914.

JAMES B. MURPHY,

Attorney for Petitioner, The Washington Trust Company.

[Endorsed]: Assignment of Errors. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [124]

**[Petition for and Order Allowing Appeal of
Washington Trust Co.]**

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

PETITION AND ORDER FOR APPEAL.

COMES NOW the Washington Trust Company, a corporation, feeling itself aggrieved by the two final orders and judgments made and entered in the above-entitled court and cause, on the 16th day of October, 1914, wherein and whereby the said court, in one of said orders, among other things, confirmed the order of the Referee entered July 28, 1914, directing that the property of the Washington Steel & Bolt Company, the above-named bankrupt, be sold by the Trustee in Bankruptcy, and wherein and whereby the said court, in the other order confirmed in part the report, findings and judgment of the referee entered July 20, 1914, and adjudged certain bonds issued by the Washington Steel & Bolt Company valid, to the exclusion of other bonds, and in effect held other bonds issued by the Washington Steel & Bolt Company void, and sustained and confirmed in part the findings, conclusions and order of the referee holding bonds of the said bankrupt void, which order was entered on July 20, 1914, by the referee, and refused to hold

certain bonds issued by the Washington Steel & Bolt Company valid, and refused to adopt the provisions proposed by the Washington Trust Company as appropriate parts of its final order and judgment, and refusing to permit the bondholders to, in any wise or to any extent, use their bonds in answering their bids at any sale had of said property, does hereby appeal from each of said orders and judgments, and from the whole and every part of each of said judgments and orders, excepting only that part holding certain bonds valid, and from the [125] various and several orders entered in said cause prior to said final orders and judgments materially affecting the rights of the Washington Trust Company, to the Circuit Court of Appeals of the United States for the Ninth Circuit, for the reasons and upon the grounds set forth in the assignment of errors which is filed herein, and prays that this petition for said appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the said final order and decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit. Your petitioner further prays that an order be made fixing the amount of security to be given and furnished for said appeal.

JAMES B. MURPHY,

Solicitor for Washington Trust Company.

**[Order Fixing Amount of Bond on Appeal of
Washington Trust Co.]**

The foregoing petition for appeal is granted and an appeal is allowed, and the amount of the bond upon said appeal is hereby fixed at the sum of \$1,000, which

bond when executed, conditioned as provided by law and the rules of the Circuit Court of Appeals, shall be a cost bond.

JEREMIAH NETERER,

Judge.

Due service of the within Petition and Order acknowledged and a true copy received this 24th day of Oct., 1914.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

[Endorsed]: Petition and Order for Appeal. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [126]

In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

Assignment of Errors [of Washington Trust Co.].

COMES NOW the Washington Trust Company, a corporation, by its attorney, the undersigned, and in connection with its petition on appeal herein from the final orders, and decrees entered in the above-entitled action on October 16, 1914, and from all other orders in said proceeding affecting the substantial rights of the said Washington Trust Company, and as assignments of error upon which it will rely upon the

prosecution of its appeal, says that in said record and proceeding there is manifest error in this, to wit:

I.

The District Court of the United States for the Western District of Washington, Northern Division, erred in holding that the bonds amounting to \$22,900.00 held by the Bank of Montreal and taken by it as security for the payment of the loan made to the Washington Steel & Bolt Company, at the time of the making of said loan, void, and in refusing to hold each of said bonds valid and secured by the trust deed given for that purpose. The said Court further erred in refusing to adopt Paragraph IV of the provisions for decree proposed by the Washington Trust Company.

II.

The said Court erred in holding that the bonds of the Washington Steel & Bolt Company afterwards taken by the Bank of Montreal, amounting to the par value of \$25,000.00, were void, and in refusing to hold the same valid and in refusing to adopt [127] as part of its decree or order Paragraph VI of the proposed provisions of the Washington Trust Company.

III.

The said Court erred in holding \$1,500.00 par value of the bonds of the Washington Steel & Bolt Company held by C. F. Chapin, void and of no effect, and in failing and refusing to hold the said bonds valid and in failing and refusing to adopt Paragraph X of the provisions for decree proposed by the Washington Trust Company.

IV.

The said Court erred in holding in effect that the bonds of the Washington Steel & Bolt Company held by Thomas F. Burley were null and void, and in failing and refusing to hold the said bonds amounting to the par value of \$2,600.00 valid, and in failing and refusing to adopt and incorporate in its decree Paragraph XII proposed by the Washington Trust Company as an appropriate part of the order of said Court.

V.

The said Court erred in ordering and directing a sale of the property of the Washington Steel & Bolt Company, and in refusing the bond holders of the said company the right or privilege to use in bidding for said property their bonds in proportion to the net amount of the proceeds of said sale which would ultimately be turned back to any bond holder as a bidder at said sale, and in failing and refusing to adopt Paragraph XXI of the provisions for decree proposed by the Washington Trust Company.

VI.

The said Court erred in refusing to grant the Washington Trust Company leave to foreclose its mortgage according to the prayer of its petition, and in refusing to require the trustee in bankruptcy, after the mortgage was held valid, to elect whether he would administer upon the equity of redemption of the property covered by said mortgage for the benefit of general creditors, or [128] surrender the property for mortgage foreclosure.

VII.

The said Court erred in the order entered October 16, 1914, in directing that there should be deducted from the proceeds of the sale such proportion of the expenses and costs as should be paid by the interests represented by the Washington Trust Company.

VIII.

The said Court erred in refusing to sustain the exceptions of the Washington Trust Company to the order entered by the Referee on the 28th day of July, 1914, and erred in confirming said order.

IX.

The said Court erred in holding in its final order certain of the bonds invalid and void, which it pronounced valid in its memorandum opinion.

X.

The said Court erred in refusing to specifically or at all, sustain Exception No. 1 of the Washington Trust Company to the Referee's Report and Findings.

XI.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 2 of the Washington Trust Company to the Referee's Report and Findings.

XII.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 3 of the Washington Trust Company to the Referee's Report and Findings.

XIII.

The said Court erred in refusing to specifically, or

at all, sustain Exception No. 4 of the Washington Trust Company to the Referee's Report and Findings.

XIV.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 5 of the Washington Trust Company to the Referee's Report and Findings. [129]

XV.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 6 of the Washington Trust Company to the Referee's Report and Findings.

XVI.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 7 of the Washington Trust Company to the Referee's Report and Findings.

XVII.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 8 of the Washington Trust Company to the Referee's Report and Findings.

XVIII.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 9 of the Washington Trust Company to the Referee's Report and Findings.

XIX.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 10 of the Washing-

ton Trust Company to the Referee's Report and Findings.

XX.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 11 of the Washington Trust Company to the Referee's Report and Findings.

XXI.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 12 of the Washington Trust Company to the Referee's Report of Findings.

XXII.

The said Court erred in refusing to specifically, or at all, sustain Exception No. 13 of the Washington Trust Company to the Referee's Report and Findings. [130]

XXIII.

The said Court erred in refusing to specifically, or at all, sustain exception No. 14 of the Washington Trust Company to the Referee's report and Findings.

XXIV.

The said Court erred in refusing to specifically, or at all, sustain exception No. 15 of the Washington Trust Company to the Referee's report and Findings.

XXV.

The said Court erred in refusing to specifically, or at all, sustain exception No. 16 of the Washington Trust Company to the Referee's report and Findings.

XXVI.

The said Court erred in refusing to specifically, or at all, sustain exception No. 17 of the Washington Trust Company to the Referee's report and Findings.

XXVII.

The said Court erred in refusing to specifically, or at all, sustain exception No. 18 of the Washington Trust Company to the Referee's report and Findings.

XXVIII.

The said Court erred in refusing to specifically, or at all, sustain exception No. 19 of the Washington Trust Company to the Referee's report and Findings.

XXIX.

The said Court erred in refusing to specifically, or at all, sustain exception No. 20 of the Washington Trust Company to the Referee's report and Findings.

XXX.

The said Court erred in refusing to specifically, or at all, sustain exception No. 21 of the Washington Trust Company to the Referee's report and Findings. [131]

XXXI.

The said Court erred in refusing to specifically, or at all, sustain exception No. 22 of the Washington Trust Company to the Referee's report and Findings.

XXXII.

The said Court erred in failing and refusing to

specifically or at all sustain the first ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXIII.

The said Court erred in failing and refusing to specifically or at all sustain the second ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXIV.

The Court erred in failing and refusing to specifically or at all sustain the third ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXV.

The Court erred in failing and refusing to specifically or at all sustain the fourth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXVI.

The said Court erred in failing and refusing to specifically or at all sustain the fifth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXVII.

The said Court erred in failing and refusing to specifically or at all sustain the sixth ground of error assigned by the Washington Trust Company in its

Petition for Review, upon [132] which the District Court passed in rendering its said decision.

XXXVIII.

The said Court erred in failing and refusing to specifically or at all sustain the seventh ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XXXIX.

The said Court erred in failing and refusing to specifically or at all sustain the eighth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XL.

The said Court erred in failing and refusing to specifically or at all sustain the ninth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLI.

The said Court erred in failing and refusing to specifically or at all sustain the tenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLII.

The said Court erred in failing and refusing to specifically or at all sustain the eleventh ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLIII.

The said Court erred in failing and refusing to specifically or at all sustain the twelfth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision. [133]

XLIV.

The said Court erred in failing and refusing to specifically or at all sustain the thirteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLV.

The said Court erred in failing and refusing to specifically or at all sustain the fourteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLVI.

The said Court erred in failing and refusing to specifically or at all sustain the fifteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLVII.

The said Court erred in failing and refusing to specifically or at all sustain the sixteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLVIII.

The said Court erred in failing and refusing to

specifically or at all sustain the seventeenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

XLIX.

The said Court erred in failing and refusing to specifically or at all sustain the eighteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision. [134]

L.

The said Court erred in failing and refusing to specifically or at all sustain the nineteenth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LI.

The said Court erred in failing and refusing to specifically or at all sustain the twentieth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LII.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-first ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LIII.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-second ground of error assigned by the Washington Trust Company

in its Petition for Review, upon which the District Court passed in rendering its said decision.

LIV.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-third ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LV.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-fourth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LVI.

The said Court erred in failing and refusing to specifically [135] or at all sustain the twenty-fifth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LVII.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-sixth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LVIII.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-seventh ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LIX.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-eighth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LX.

The said Court erred in failing and refusing to specifically or at all sustain the twenty-ninth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LXI.

The said Court erred in failing and refusing to specifically or at all sustain the thirtieth ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LXII.

The said Court erred in failing and refusing to specifically or at all sustain the thirty-first ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision. [136]

LXIII.

The said Court erred in failing and refusing to specifically or at all sustain the thirty-second ground of error assigned by the Washington Trust Company in its Petition for Review, upon which the District Court passed in rendering its said decision.

LXIV.

The said Court erred in refusing to incorporate in

its said order and decree upon review Paragraph I of the provisions requested by the Washington Trust Company to be incorporated in the order or decree of the court.

LXV.

The said Court erred in refusing to incorporate in its said order and decree upon review Paragraph II of the provisions requested by the Washington Trust Company to be incorporated in the order or decree of the court.

LXVI.

The said Court erred in refusing to adopt Paragraph III of said provisions.

LXVII.

The said Court erred in refusing to adopt Paragraph V of said provisions.

LXVIII.

The said court erred in refusing to adopt Paragraph VII of said provisions.

LXIX.

The said court erred in refusing to adopt Paragraph VIII of said provisions.

LXX.

The said court erred in refusing to adopt Paragraph XIII of said provisions.

LXXI.

The said court erred in refusing to adopt Paragraph XIV of said provisions. [137]

LXXII.

The said court erred in refusing to adopt Paragraph XVI of said provisions.

LXXIII.

The said court erred in refusing to adopt Paragraph XVIII of said provisions.

LXXIV.

The said court erred in refusing to adopt Paragraph XIX of said provisions.

LXXV.

The said court erred in directing a sale of the said lands and premises before the validity of the said bonds was finally passed upon and determined, and in failing to suspend the sale until the prosecution of an appeal might be had from its judgment.

LXXVI.

The said court erred in confirming the order entered July 28, 1914, permitting and directing the sale of the property of said bankrupt.

LXXVII.

The said court erred in confirming in part the Report, Findings, Conclusions and Judgment of the Referee entered July 20, 1914.

WHEREFORE, The Washington Trust Company prays that the decrees and orders of the United States District Court for the Western District of Washington, Northern Division, appealed from herein, be reversed and said cause be remanded with instructions to the District Court to sustain the exceptions of appellant to the Report, Findings, Conclusions and Judgment of the Referee entered July 20, 1914, and sustain its exceptions to the order directing the sale of said property, entered by said referee on [138] July 28, 1914, and that each and every bond issue by the said Washington Steel & Bolt Company and

proved in this action, as shown by the record, be adjudged and decreed valid, existing obligations of the Washington Steel & Bolt Company, and secured by the mortgage or trust deed referred to and described in the record herein, and that the trustee be required to elect whether he will administer upon the equity of redemption of the said order, or surrender the same for foreclosure, and if a sale of said property is directed or ordered to be made by the Trustee in Bankruptcy, and bond holder holding valid bonds to be adjudged and decreed the right to use the bonds in bidding at said sale, and that the Washington Trust Company, the appellant herein be permitted to use the said bonds with the consent of the holders thereof, in answering any bid which it might make for the use and benefit of said bond holders, and that the said proceedings and said orders and decrees be corrected and made to conform to the facts as produced at the trial and the law as may be announced by this Court, and that it have any other and further relief that this Court may deem meet and equitable and consistent with the record herein.

JAMES B. MURPHY,

Attorney for Washington Trust Company.

Due service of the within Assignment of Error acknowledged and a true copy received this 26th day of October, 1914.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

[Endorsed]: Assignment of Error. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [139]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Bond [on Appeal of Washington Trust Co.].

KNOW ALL MEN BY THESE PRESENTS,
that the Washington Trust Company, a corporation,
as principal, and AMERICAN SURETY COM-
PANY OF NEW YORK, a corporation as surety,
acknowledge themselves to be jointly and severally
held and firmly bound unto the above-entitled Wash-
ington Steel & Bolt Company and Edward H. Cha-
velle, its Trustee in Bankruptcy, in the full, just sum
of \$———, lawful money of the United States,
for the payment of which, well and truly to be made
the said principal and the said surety bind them-
selves, their successors and assigns jointly and sever-
ally, firmly by these presents.

DATED this 24th day of October, 1914.

The condition of the foregoing obligation is such
that whereas the above-entitled court, in the above-
entitled cause, entered and rendered on the 16th day
of October, 1914, a final judgment and order in favor
of the contention of the said trustee and against the
contention of the Washington Trust Company, the
principal herein, holding certain bonds of the Wash-
ington Steel & Bolt Company void, and refusing to
hold certain bonds issued by the Washington Steel
& Bolt Company valid, and confirming in part the

Findings, Conclusions and Judgment of the referee entered July 20, 1914, and also on said date entered an order confirming an order of the referee entered July 28, 1914, permitting and directing a sale of the lands and premises of said Washington Steel & Bolt Company free of encumbrances, and whereas the above-named principal, feeling itself [140] aggrieved by the said judgments and various orders entered in said cause prior to said judgments, has taken appeal from said final orders and decrees and said orders to the United States Circuit Court of Appeals for the Ninth Circuit, and whereas the Court has allowed said appeal and fixed a bond in the sum of \$1000.00.

NOW, THEREFORE, to protect the said appeal and in compliance with the order allowing the same, this obligation is given and if the said principal and appellant shall prosecute its said appeal to effect, and answer all damages and costs, if it shall fail to make good its appeal, then the above obligation shall be void, otherwise to remain in full force and virtue.

WASHINGTON TRUST COMPANY,

[Seal]

By JAMES B. MURPHY,

Its Attorney.

AMERICAN SURETY COMPANY OF
NEW YORK,

By EDWARD LYONS,

Its Resident Vice President.

ATTEST:

A. E. KRULL,

Its Resident Assistant Secretary.

The foregoing bond is hereby approved as to the amount and sufficiency of the sureties.

JEREMIAH NETERER,
Judge.

Due service of the within Bond acknowledged and a true copy received this 26th day of Oct. 1914.

J. W. RUSSELL,
Attorney for Trustee in *Bankrupt*.

[Endorsed]: Bond. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [141]

[Petition of Washington Trust Co. for Revision,
etc.]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

PETITION FOR SUPERVISION & REVISION.
To the Honorable Judges of the Circuit Court of Appeals of the Ninth District:

Your petitioner, the Washington Trust Company, feeling itself aggrieved by the orders, judgments and proceedings hereinafter referred to and described, hereby petitions the Court to superintend and revise the said orders and judgments, and in that connec-

tion and to that end your petitioner respectfully shows as follows:

I.

That it resides at Spokane in Spokane County, State of Washington and in the above-entitled district, and is a creditor of the Washington Steel & Bolt Company, a corporation, the above-entitled bankrupt, who was adjudged a bankrupt by the District Court of the United States for the Western District of Washington, Northern Division on the 18 day of September, 1911.

II.

That after such adjudication the following proceedings were had in the case of the said bankrupt, which have resulted prejudicial, as your petitioner verily believes, to the legal rights and remedies of your petitioner;

a. That heretofore, to wit: during the month of May, 1912, Edward H. Chavelle, as trustee of the estate of the above-entitled bankrupt, filed a petition before the Honorable John P. Hoyt, the Referee, to which the above-entitled matter had been duly and [142] regularly referred by the said District Court, wherein the said trustee sought to have all the property of the said bankrupt sold for cash, free and clear of encumbrances.

b. That a notice and citation was issued to your petitioner to appear, and show cause why the said property should not be sold.

c. That in answer to said notice your petitioner, on the third day of June, 1912, filed an Answer thereto, which Answer contained also a cross-peti-

tion setting forth the facts that on September 1, 1908, the said bankrupt, the Washington Steel & Bolt Company, while it was engaged in the transaction of its own business and four months prior to the decree or order adjudging it a bankrupt, made, executed and delivered to your petitioner a trust deed, securing bonds to be issued in the sum of Two Hundred Thousand Dollars (\$200,000.00), which deed covered all the property of the Washington Steel & Bolt Company and was recorded in Volume 69 of Mortgages, at page 388, Record of Mortgages of Snohomish County, Washington, that being the county in which the property of the said Washington Steel & Bolt Company was situated, and that the said mortgage was duly filed as a chattel mortgage, and that the bonds to the amount of \$53,100.00 had been negotiated by the said Washington Steel & Bolt Company, and were outstanding, and that in compliance with the provisions of said mortgage the holders of said bonds requested your petitioner to foreclose the mortgage and take such steps as might be necessary to protect their interests in the premises, and prayed that the petition of the said trustee in bankruptcy be denied and that it, your petitioner herein, be granted an order authorizing and empowering it to foreclose this mortgage upon the real and personal property belonging to said bankrupt, and that the cross-petition of the Washington Trust Company was amended to fix the date of the execution of the said mortgage as the 9th day of September to correspond with the date of the acknowledgment appearing thereon. [143]

d. This answer and cross-petition was afterwards, to wit: On August 14, 1912, supplemented by another petition, substantially in the form of the former petition, asking leave to foreclose said mortgage, to which answer and cross-petition and petition the Trustee in Bankruptcy answered, denying certain allegations therein and alleging that no bonds were regularly issued by the said Washington Steel & Bolt Company, as provided in said trust deed, and that all the bonds issued by the Washington Steel & Bolt Company in connection with said deed and trust were fraudulent and void, and prayed that the prayer of your petitioner be denied to which affirmative matter a reply was filed by your petitioner denying the affirmative matter in said answer.

e. That evidence was taken upon the issues so joined, and on the 26th day of November, 1912, the referee rendered a memorandum of decision granting the Washington Trust Company leave to foreclose its mortgage upon paying into bankrupt court the sum of Twelve Hundred Dollars (\$1200.00) to defray the expenses incident to the care of the property and certain charges for the Referee and Trustee in Bankruptcy, and on the 19th day of November, 1912, entered a formal order granting your petitioner leave to foreclose upon the payment of said sum.

f. That your petitioner, feeling itself aggrieved by the said decision and order, had the correctness of said order reviewed by the District Court, and that thereafter, on the third day of March, 1913, the said District Court reversed the ruling of the said referee and referred the case back for the further

taking of testimony upon all questions relative to the scope and validity of the mortgage and the bonds secured thereby and directed that when such questions had been determined the trustee must elect whether he would administer the equity of redemption in the property for the benefit of general creditors provided said mortgage and bonds are held valid, or surrender the mortgaged property to the mortgagee for foreclosure. From this order there was no appeal and [144] the cause was sent back for taking of testimony pursuant thereto. After taking the testimony on May 15, 1913, the Honorable John P. Hoyt, referee, rendered a memorandum decision holding that the said trust deed was void, and on June 16, 1913, following entered a formal order denying the petition of your petitioner to foreclose upon the ground and for the reason that the said mortgage and bond were null and void.

g. Your petitioner, feeling itself aggrieved by said decision, had the correctness thereof reviewed by the judge of the District Court, who, on the —— day of September, 1913, filed a memorandum decision holding the trust deed valid but referred the cause back to the referee for the taking of further testimony upon the amount due and owing upon the bonds and under date of November 14, 1913, entered a formal order by said judge of the District Court, referring the case back pursuant to the tenor of said opinion. Further testimony was taken. Thereafter, on the 20th day of July, 1914, the referee made his Findings of Fact and Conclusions of Law, and on the same day entered an order wherein and whereby

it was ordered that the prayer of the petition of your petitioner to foreclose said mortgage be denied, and that the claim of the Washington Trust Company be rejected and disallowed and expunged from the list of claims upon record in this case, and the said Referee in Bankruptcy, on July 28, 1914, entered an order upon the petition of the Trustee in Bankruptcy to sell said property authorizing and directing him to sell all the property of the said bankrupt, which property was covered by said mortgage, for cash, free and clear of claims of the said mortgage and the said bonds. Each of said orders was taken to the district judge upon a petition for review. The Honorable Jeremiah Neterer, as district judge, on the 15th day of September, 1914, rendered a memorandum opinion, in which he held bonds amounting to \$37,000.00 valid and \$25,000.00 invalid, and that the said bonds were secured [145] by the trust deed which was valid, but afterwards modified his decision holding \$10,000 of said bonds valid and the remaining bonds void and confirmed the order of the referee directing that the property be sold for cash by the said trustee, and denying the holders of the bonds, which were declared valid, the right to use their bonds in any manner in bidding at said sale. Exceptions were duly taken to the ruling of the said district judge and certain findings or orders were presented by your petitioner for signing, signing of which was refused by the said judge, and this petition is to review the correctness of the ruling of the said judge upon said matters.

A copy of the order directing a sale of the prop-

erty free and clear of encumbrances is hereto attached and marked Exhibit "A."

A copy of the memorandum opinion rendered by the said judge is hereto attached and marked Exhibit "B."

A copy of the order pronouncing the invalidity of said bonds is hereto attached and marked Exhibit "C."

A copy of the exceptions made thereto by your petitioner is hereto attached and marked Exhibit "D."

A copy of the decree or order proposed by your petitioner and refused by the said judge, together with his notation as to the exception thereto, is hereto attached and marked Exhibit "E."

A copy of the order of the said honorable judge confirming the order of the Referee for the sale of said property is hereto attached and marked Exhibit "G."

III.

That the ruling of the said Honorable Jeremiah Neterer was erroneous in law and in fact in the following particulars: [146]

a. Said order was erroneous in that it did not adjudge each bond held by the Bank of Montreal valid, and in that it omitted to include in the valid bonds of the Washington Steel & Bolt Company the bonds held by the Bank of Montreal.

b. Said order was erroneous in that it held \$1500.00 of the par value of the bonds held by C. F. Chapin void.

c. Said order was erroneous in that it did not ad-

judge that all the bonds held by Thomas S. Burley were valid and in omitting from the bonds held valid the bonds held by Thomas S. Burley.

d. The action of the said judge was erroneous in that it did not require the said trustee in bankruptcy to administer upon the equity of redemption in said property for the benefit of general creditors, or to surrender the property for foreclosure.

e. The said judge erred in refusing to incorporate in his order and judgment Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18a and 18b of the order or decree proposed by your petitioner, and each of them.

f. That the said Court erred in affirming the order of the referee directing a sale of the said lands and premises for cash.

g. The said order was erroneous in that it provided that a certain portion of the proceeds of the sale of the said property should be applied to the payment of the expenses of the bankruptcy proceedings before the application of any of said funds to the payment of said bonds.

IV.

That the amount involved in the above controversy exceeds the sum of \$2,000.00, and that the par value of said bonds, exclusive of interest, amounts to approximately \$45,000.00. [147]

WHEREFORE, your petitioner, feeling aggrieved because of such orders, and each of them, asks that the same may be reviewed in matters of law by your honorable Court, as provided in Section 24-B of the

Bankruptcy Law of 1898 and the rules and practice in such case provided.

WASHINGTON TRUST COMPANY.

By JAMES B. MURPHY,

Its Attorney.

JAMES B. MURPHY,

Attorney for Petitioner. [148]

State of Washington,

County of King,—ss.

I, JAMES B. MURPHY, being first duly sworn upon oath, deposes and says: That he is the attorney for the petitioner above named, the Washington Trust Company; that the Washington Trust Company has no officer or agent within the County of King, State of Washington, or nearer than Spokane, and that affiant is the agent and attorney of the said Washington Trust Company for the purposes of all litigation in the above-entitled matter and the prosecution of this petition for review, and that the statement of facts contained in the foregoing petition for review are true according to the best of my knowledge, information and belief.

JAMES B. MURPHY.

Subscribed and sworn to before me this 26 day of October, 1914.

[Seal]

ISRAEL NELSON,

Notary Public in and for the State of Washington,

Residing at Seattle, County and State aforesaid.

Due service of Petition for Revision acknowl-

edged and a true copy received this 26th day of Oct. 1914.

J. W. RUSSELL,
Attorney for Trustee in Bankruptcy.

[Endorsed]: Petition for Supervision and Revision. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy.
[149]

**[Order Extending Time to November 2, 1914, to File
Praeipie for Record, etc.]**

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Upon the application of the Washington Trust Company and good cause appearing therefor, the time to file a praecipe for the record on appeal herein, together with a narrative statement of the evidence to be embodied in the record on appeal, is hereby extended to the 2d day of November, 1914.

Dated this 26th day of October, 1914.

JEREMIAH NETERER,
District Judge.

O. K. J. W. RUSSELL,
Attorney for Trustee in Bankruptcy.

[Endorsed]: Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby Clerk. By B. E. S., Deputy. [150]

**[Order Extending Time to November 5, 1914, to File
Praeipie for Record, etc.]**

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Upon the application of the Washington Trust Company and good cause appearing therefor, the time to file a praecipe for the record on appeal herein, together with a narrative statement of the evidence to me embodied in the record on appeal, is hereby extended to the 5th day of November, 1914.

Dated this 2d day of November, 1914.

JEREMIAH NETERER,
District Judge.

O. K. Russell.

[Endorsed]: Extension of Time for Filing Praeipie and Narrative Statement of Evidence. Filed in the United States District Court, Western District of Washington. Nov. 2, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [151]

**[Order Extending Time to November 10, 1914, to
File Praeipe for Record, etc.]**

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Upon the application of the Washington Trust
Company and good cause appearing therefor, the
time to file a praecipe for the record on appeal
herein, together with a narrative statement of the
evidence to be embodied in the record on appeal, is
hereby extended to the 10th day of November, 1914.

Dated this 5th day of November, 1914.

JEREMIAH NETERER,
Judge.

O. K. Russell.

[Endorsed]: Order Extending Time to File Prae-
cipe. Filed in the United States District Court,
Western District of Washington. Nov. 5, 1914.
Frank L. Crosby, Clerk. By B. E. S., Deputy.
[152]

**[Order Extending Time to November 16, 1914, to
File Praecept for Record, etc.].**

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

Upon the application of the Washington Trust
Company and good cause appearing therefor, the
time to file a praecipe for the record on appeal
herein, together with a narrative statement of the
evidence to be embodied in the record on appeal, is
hereby extended to the 16th day of November, 1914.

Dated this 10th day of November, 1914.

JEREMIAH, NETERER,
District Judge.

O. K. Russell.

[Endorsed]: Order Extending Time. Filed in the
United States District Court, Western District of
Washington. Nov. 10, 1914. Frank L. Crosby,
Clerk. By B. E. S., Deputy. [153]

**[Order Extending Time to November 23, 1914, to
File Praeipe for Record, etc.].**

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Upon the application of the Washington Trust Company and good cause appearing therefor, the time to file a praecipe for the record on appeal herein, together with a narrative statement of the evidence to be embodied in the record on appeal, is hereby extended to the 23d day of November, 1914.

Dated this 14th day of November, 1914.

JEREMIAH, NETERER,

District Judge.

O. K. Russell.

[Endorsed]: Order. Filed in the United States District Court, Western District of Washington. Nov. 16, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [154]

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*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**NARRATIVE STATEMENT OF THE TESTI-
MONY FOR EMBODIMENT IN THE REC-
ORD OF APPEAL IN THE ABOVE-EN-
TITLED CAUSE.**

Hearing before Hon. JNO. P. HOYT, Referee in
Bankruptcy, April 3, 1914, in Seattle, Washington.

Deposition of Thomas S. Burley.

(Witness on behalf of Washington Trust Com-
pany.)

My name is Thomas S. Burley. I reside in Se-
attle. I am the owner of \$2600 par value of the
bonds of the Washington Steel & Bolt Company.
Interest has been paid upon the bonds I hold to
September 1, 1911. My bonds are numbered 443,
444, 445, 498, 499, 500, 701 and 717, which bonds are
received in evidence and marked exhibits 40 to 47
respectively; the unpaid detached coupons accom-
panying the bonds marked Exhibit 48. I acquired
these bonds in the fall of 1908. I think it was when
they first came out. I got them in a trade from A.
McPhaden and paid a valuable consideration. I
bot them under a contract with A. McPhaden. I

(Deposition of Thomas S. Burley.)

fulfilled all the terms and conditions of that contract. This contract bears date about September 14, 1908. This contract contained a provision that Mr. McPhaden would buy them back at 90¢ on the dollar, but he refused to do it. (Contract produced, received in evidence and marked Exhibit 49.) The signature on these bonds, as officers of the Washington Steel & Bolt Company, are the signatures of Mr. Pike and Mr. McPhaden.

Cross-examination.

Q. I see that this contract (referring to contract between [156] Burley and McPhaden) Mr. Burley, calls for three one thousand dollar bonds?

A. They did, sir.

Q. While, as a matter of fact, the bonds you have produced here are two \$1000 bonds and six \$100 bonds? A. Yes, sir.

Q. Where does that discrepancy of four hundred dollars come?

A. I will explain that. These bonds were put in escrow until I finished that wagon, filed away, and then when I finished what I agreed to do I went and demanded them. In March, I think it was, about the 1st of March, I went to get the money for the bonds, or the bonds, either one, and they had not been given up, and he said he couldn't pay me any money. So there was a party that I gave four hundred dollars to, and he gave me the hundred dollar bonds for the thousand.

I could not say whether those bonds were the bonds of McPhaden at that time, or whether they

(Deposition of Thomas S. Burley.)

were issued direct by the Washington Steel & Bolt Company. They were put in the safe for safe keeping by the bank there, by Mr. Webster, I think. They were certified by the trust company. I do not know whether McPhaden took the bonds with him when we made this contract. They were put in trust, but whether by McPhaden or the company I don't know. I expect he had authority from the company to do anything he had to do. I supposed they were the company's bonds. I did not know whether they were McPhaden's bonds or what they were, as far as that goes. The stock of the Co-operative Industrial Securities Company,—756,900 shares—I was interested in that company, making wagons and rotary axle. The par value of these shares was \$1.00. This stock had been selling for 10¢ a share and then some higher, going up all the time. I could not say whether this company is still alive. I think it is. I would not say for sure. I have not been in Spokane for some time. The forty [157] acres at Kennewick I got a deed for. The deed was signed by McPhaden I think. I sold the property soon afterwards. McPhaden valued the land at \$2000 taking out \$216.00. There was no money paid in the transaction at all. He gave me a \$500 note, which was paid. That \$500 went to a party interested in that axle with me. The stock in the co-operative Industrial Securities Company was sold on the 14th day of September, 1908, in the market at 15¢ per share. I took these bonds of the Washington Steel & Bolt Company at \$3000. Did

(Deposition of Thomas S. Burley.)

not quote any particular price. McPhaden and I had no understanding as to what they were put in the deal at. There was no understanding whether they were being put in at 100 cents on the dollar, 90 cents on the dollar, or 95 cents on the dollar, but the contract provided that if I wanted to dispose of them on or before March 1st, following, he would take them back from me at 90 cents on the dollar. I cut the detached coupons off and sent them in for a payment of interest, but they were not paid. I knew McPhaden about a year before this transaction with him. I first bought some stock in the Washington Steel & Bolt Company thru him. The spring before I made this contract I bot 751 shares which I still have. I have forgotten the figures on the value of equipping the two vehicles with the Van Luren axle. I think they cost me somewheres about \$100.

Redirect Examination.

My contract was with McPhaden personally. He didn't sign it for the Washington Steel & Bolt Company. [157½]

Deposition of A. McPhaden, April 14, 1914.

(Witness on behalf of Washington Trust Company.)

My name is A. McPhaden. I was connected with the Washington Steel & Bolt Company in the capacity of President from 1906 to sometime about December, 1909.

Q. Mr. McPhaden, I hand you certain bonds, which are marked petitioners' exhibits by Dora

(Deposition of A. McPhaden.)

Beach, a Notary Public who took depositions 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and ask you to examine these bonds and see if they bear the signature of yourself as President and the signature of Mr. Pike as Secretary of the Washington Steel & Bolt Company.

Mr. RUSSELL.—It is not necessary to go through those bonds. There is no question, I think, but what Mr. McPhaden and Mr. Pike signed these bonds.

Mr. MURPHY.—Well, if that is true, I will not prove the signatures, counsel admitting that the signatures are the signatures of the officers and also the seal of the company.

The COURT.—That is satisfactory.

Testimony continued:

While I was President of the company I had the selling of the bonds. While I was President of the company I first saw the Bank of Montreal in Spokane concerning the borrowing of money for the company along in March or April of 1909. We were short of money and I went to the bank to see if I could not negotiate a loan. The Manager of the Bank wanted to know the conditions of the company. The bonds outstanding, etc. I explained to him the number of bonds that were out and by whom owned.

[158]

He said it could make no loan unless it could have those bonds put up as security, a portion of them. I told him the bonds I had, and also that Mr. Pike had some. He wanted to know if I could put up these bonds as collateral security and he said he would go

(Deposition of A. McPhaden.)

down and see the plant. We agreed to that so he did come down and saw the plant. That same day he agreed to advance us \$20,000 on a loan. That was before the Washington Steel & Bolt Company received any money. I agreed to put up all the bonds that I had at that time, \$20,000, but I did not have them on hand. I had loans on them which I advanced to the company again. I could not get them at that time until I released them. After I did get them I did put them up there at different times with the Bank. When I put them up it was pursuant to the agreement I had with the Bank. The Bank also required Mr. Pike and myself to sign individual notes as security for the same loan. I was not an officer of the company at a later date when \$24,000 or \$25,000 additional bonds were put up with the Bank of Montreal as additional security for this loan. I was a stockholder at that time. I was not on the Board of Trustees at that time. There was an overdraft at that time and unpaid interest and the Bank wanted this additional security. I am not certain just the date I severed my connections with the company, but it was during December, 1909, or February, 1910. The Bank of Montreal did actually advance and loan to the Washington Steel & Bolt Company, pursuant to said agreement, the sum of \$20,000.

Cross-examination.

The first \$10,000 of the \$20,000 was got, I think, in May of 1909. I don't know as I put up any bonds at that time. We got \$5,000 a couple of months afterwards. I don't remember that I put up any bonds

(Deposition of A. McPhaden.)

at that time. Shortly afterwards we got \$2,500 more. I could not say whether I put up any bonds at that time. Later, I should judge about six months after, we got the balance of it. [159] I don't remember whether I put any bonds up when the last note was made. I could not say whether I had put up any bonds to the time that I got the last note negotiated. They had the bonds in their possession at that time. They had them there. There was from time to time I put up bonds. I had them out on loans. When I got them I turned the money in. As soon as I got the money I took them up and put them back in the Bank against this loan. I could not say whether I had put any of them there against this loan prior to the time that I negotiated the last one of these notes. The bonds put up with the Bank were my individual bonds. I bought them of the Washington Steel & Bolt Company, and paid for them in cash at the rate of 90¢ on the dollar. I did not pay the cash at the time I got the bonds. I advanced the Washington Steel & Bolt Company money prior to the getting of the bonds. I did not get all the bonds at one time. The record book of the Washington Steel & Bolt Company will show these advances. I could not say what book as I am no bookkeeper. But I saw the amounts set down in the cash book or journal and there was a ledger. I do not know enough about bookkeeping to know just what books that account should be in. I kept no personal account of my advances to the company but sent the money down to the office and they kept track of it down there. I

(Deposition of A. McPhaden.)

kept tab at that time, but all those papers were destroyed when I closed my office in Spokane three years ago—four years ago. I advanced this money in all kinds of sums, small sums and large sums, just as I got it. I borrowed much of the money that I advanced to the company, some from the directors of the company, some from my own brothers, and some from stockholders. Some of the money I advanced to the company was derived from the sale of stock of the Washington Steel & Bolt Company but not all of it. I sold some of my own personal stock and put the money in there but the greater portion of it was borrowed money. I borrowed some from ———. He was an officer and stockholder of the Washington Steel & Bolt [160] Company. I borrowed as high as \$1800 to \$2,000 from this party that I loaned the company. I borrowed some more money from Mrs. Siewert of Spokane. She was a stockholder in the company. I borrowed \$1500 or \$2,000 from her all at one time. This was in 1908 or 1909. I also borrowed money from C. F. Chapin of Coeur d'Alene, Idaho. I borrowed up as high as \$2,500 once. I paid him in bonds of the Washington Steel & Bolt Company. I bot the bonds from the company, borrowed the money from him, gave it to the company. Then when I paid him off, I sold him the bonds. Before the bonds were issued I think I loaned the company \$27,000 all told, something like that. I am not exactly sure. There were no bonds sold outside of what I sold except \$2,900 par value that went to Mr. Pike. Aside from the \$2,900 par value bonds

(Deposition of A. McPhaden.)

that went to Mr. Pike all the balance of the bonds were delivered to me. I paid for them all except the \$25,000 in bonds that were later given to the Bank of Montreal. The balance I paid 90 cents on the dollar to the Washington Steel & Bolt Co. The bonds outstanding of the Washington Steel & Bolt Company are \$2,900 par value issued to Mr. Pike, \$34,200 issued to me and \$25,000 later issued direct by the Washington Steel & Bolt Company to the Bank of Montreal; that I think is correct, I won't be \$100 out. I bot the bonds I received from the Washington Trust Company by paying them 90¢ on the dollar from time to time, and sold the bonds, turned the money back again, etc., kept them going in that way and sometimes I loaned individual stock, and gave some of my own personal stock as inducements to sell bonds. I took no salary. There was 1906, 1907, 1908, 1909, four years, that I did not receive one cent of salary with the exception, I think, of \$75.00, which was 5% of the treasury sales for two or three months. I have forgotten which it was. Otherwise I did not get any salary.

The total capitalization of the stock was \$2,000,000. I got \$1,400,000 in stock from the Washington Steel & Bolt Company when [160½] I turned over to the company a patent of the Cline rail joint. I had two partners in this patent, Mr. Cline of Detroit, Michigan, and J. H. McKelvey of British Columbia; bot them out; paid one man \$1500, I think, and a block of stock and the other man got cash, something like \$1500. I bought his third interest outright for

(Deposition of A. McPhaden.)

\$1500 without any stock, as I remember it. We each originally had a one-third interest. The block of stock I gave in the above purchase was 25,000 or 50,000 shares of the Washington Steel & Bolt Company. It was my stock, a part of the \$1,400,000. I do not know the actual value of the patent that was turned over to the Washington Steel Bolt Company. At that time it was to be demonstrated. I do not think it was ever demonstrated. I got the bonds for 90¢ on the dollar in this way,—first \$75,000 were to be sold as mentioned in the mortgage deed of trust. They were to be sold at 95¢ on the dollar, and the Washington Steel & Bolt Company passed a resolution that there be allowed 5% commission for selling. That would net 90¢.

Q. How much money did you advance the Washington Steel & Bolt Company all told for which you took bonds?

A. Well, I will tell you. There was \$37,100. Subtract \$2,900 and take ten per cent off, and the balance was cash.

Q. And the books of the Washington Steel & Bolt Company will show that?

A. Show every dollar of it; yes, sir.

Redirect Examination.

Bonds numbered 409, 654 and 653 were shown witness and he identified the signatures and the seal of the company and the certificate of the Washington Trust Company through Mr. Webster. I paid for these bonds, provided they do not belong to the \$25,000 that was issued to the Bank as additional security.

(Deposition of A. McPhaden.)

Q. You mean Mr. Pike's or these. These are bonds held by Osborne of Chicago?

A. I could not swear these are the ones. [161]

(Bonds were offered in evidence.)

Mr. RUSSELL.—I object as incompetent and immaterial. It is not sufficiently designating the bonds or identifying them. I object to their being received in evidence as not properly proven.

(The bonds were received in evidence and marked Exhibits Nos. 50 to 52, inclusive.)

Mrs. Meta McElroy was Meta Seiwert and is the person of whom I borrowed the money. She paid me for the bonds in cash. (Exhibits 7 and 8 being two checks signed by Meta Seiwert, now Meta McElroy, were received in evidence.) I know Mr. Chapin of Coeur d'Alene. I had borrowed money from him, which I sent to the Washington Steel & Bolt Company. The Washington Steel & Bolt Company was paid in cash for these bonds by me and all the money paid the company for these bonds was used by the company. All the bonds of the Washington Steel & Bolt Company, which I received were received from the Washington Trust Company pursuant to resolution of the Board of Trustees of the Washington Steel & Bolt Company. I had to deliver to the trust company the resolution or a copy of the minutes before they would deliver to me the bonds. Concerning the taking of bonds at 90¢ on the dollar, the company agreed to allow for the sale of these bonds 5% on par. This was passed by resolution of the Board of Trustees. I have not the minute book showing the

(Deposition of A. McPhaden.)

minutes of the company. It was left with the company when I severed my connection with them. I spent the most of my time in Spokane. I advanced to the company \$37,100, less \$2,900, and less 10%, and received bonds therefor. That was all I advanced for bonds. [162]

A. McPHADEN (Recalled).

A. McPhaden was recalled for further cross-examination, and testified as follows:

I have not the minute book of the Washington Steel & Bolt Company. I never saw it in the courtroom at the trial in Spokane. It was not offered in evidence as I know of. I never saw it. There was a corporation book at Spokane in the courtroom held by a man back in the audience who was one of their witnesses. It appeared to be about the size and shape of the minute book of the Washington Steel & Bolt Company, but whether it was or not, or what it was, I do not know. That is all I saw of it. I do not know that it was the minute book of the Washington Steel & Bolt Company.

Redirect Examination.

With reference to the \$9,000 of bonds delivered to me by The Washington Trust Company upon my notes I was in the country and in order to make things come around quick and save time I thought it better to take these bonds with me, and in order to do so I wrote the company here to try to pass a resolution allowing the Washington Trust Company to take my notes so I could get these bonds, with the understanding that if I did not make a deal I was to return

(Deposition of A. McPhaden.)

the bonds back, and receive the notes back, which was done. I did not make the deal, and turned the bonds back, and the resolution was passed authorizing them to deliver me those notes. The bonds were returned to the Washington Trust Company, and they delivered me the notes. The \$9,000 in bonds delivered to me on authority of the Washington Steel & Bolt Company, and which was returned to The Washington Trust Company by me, was not included in the bonds which I mentioned as being issued and negotiated. I never did have access to the bonds held by The Washington Trust Company except when a resolution was passed by the Washington Steel & Bolt Company and the minutes delivered to The Washington Trust Company. [163] The money which I paid for the bonds of the Washington Steel & Bolt Company, which were negotiated, was always paid in advance of getting the bonds.

Recross-examination.

Q. You state these bonds were issued to you in payment of money that you had theretofore advanced to the Washington Steel & Bolt Company. Now, was that money that you had been depositing in the Bank to their credit, or was it money that you expended for them?

A. No, I forwarded them the money in ninety-nine cases out of a hundred. I very often put the money in the Bank up there, or sent it down here.

Q. How long afterwards before you would get the bonds?

A. Well, maybe it would accumulate first before

(Deposition of A. McPhaden.)

the bonds were issued, and I had quite a large sum in there credited that way, and I would have up to \$5,000 or \$4,000. When it got to certain amounts, if I saw a sale for bonds I bought the bonds and sold the bonds, and turned in more.

Q. It was only as you had opportunity to sell bonds then that you had them issued?

A. Usually. When I saw a chance to sell them, I called for them.

Q. Isn't it a fact that whenever you wanted any of those bonds you would direct a meeting of the Board of Directors to be held, and a resolution passed?

A. That was usually the case.

I was at the time President and Trustee of the corporation. I did not meet with the trustees. I was usually in Spokane. Mr. Ammon, the Vice-president, took my place. He was a trustee also.

Q. You simply wrote over that you wanted such and such a resolution passed, and they would pass it.

A. It was up to them if they thought it was for the best, and [164] they usually found it was for the best. They had a right to object if necessary. I was not the whole thing. I was only one out of five trustees.

I do not think we ever had seven trustees on the Board that I remember of, but there was a time when we changed the name of the Washington Steel & Bolt Company, and I think at that time there was a meeting of the stockholders to allow seven if necessary at one time. We could have three or seven. I do not remember of ever seven acting on the Board. I think

(Deposition of A. McPhaden.)

it was five. I have no arrangements with the Bank of Montreal concerning this property when it is sold.

[165]

Deposition of T. T. Barbour April 14, 1914.

(Witness on behalf of The Washington Trust Company.)

My name is T. T. Barbour. I reside at Edmonds, Washington; have resided there for six years. My business is ranching at the present time. I was bookkeeper of the Washington Steel & Bolt Company from the first of April, 1910, until it went into bankruptcy in September, 1911. As bookkeeper I had charge of the books of account of the company, and had charge of the office at the time the trustee was appointed and took possession. At that time all the books of account were in the office except one. That was the minute book. The ledgers were there, the cash books were there, the journals were there, the day books were there, and they were all turned over to the Trustee in Bankruptcy in this case.

(Mr. Barbour was here handed the book marked "Journal" on the back, and on the side of the book marked "Cash Book.")

I recognize this book as one of the books kept by the Washington Steel & Bolt Company as a cash book. I used it more as a bank book than I did a cash book. The journal is practically a cash [166] book. It shows the receipts in cash of the Washington Steel & Bolt Company from all sources. On page 189 of this book is an entry showing a deposit by the company in the Bank on May 1, 1909, of \$10,000. On page

(Deposition of T. T. Barbour.)

52 of the journal it shows that the Bank of Montreal advanced on May 1, 1909, to the Washington Steel & Bolt Company the sum of \$10,000. On page 58 of the journal is an entry showing the receipt from the Bank of Montreal of \$5,000. This \$5,000 was deposited to the credit of the Washington Steel & Bolt Company. On page 70 of the journal under date of June 16th is an entry showing the receipt from the Bank of Montreal of the sum of \$2,500, which was deposited to the credit of the Washington Steel & Bolt Company. On page 84 of the journal and page 202 of the Bank deposit book it shows a receipt under date of July 28th from the Bank of Montreal of \$2,500, and the same was on the same day deposited to the credit of the Washington Steel & Bolt Company. The same transaction shows a note given of \$2,500 and a credit of that amount of cash. These four entries total \$20,000. The books of the Washington Steel & Bolt Company show that all this money was deposited by the Bank of Montreal to the credit of the Washington Steel & Bolt Company. The books of the Washington Steel & Bolt Company also show that all this money so deposited was used by it.

These are not the only books that were in the office at the time I turned it over to the Trustee in Bankruptcy. There was a set of books ahead of this one, the old set of books, and then the ledgers and the note books. I was acquainted with the account of Mr. McPhaden, in the new ledger which is a continuation of the old account. Mr. McPhaden's account, as it ap-

(Deposition of T. T. Barbour.)

peared on the books of the Washington Steel & Bolt Company, always showed that McPhaden had a credit for money paid into the company. McPhaden had advanced money to the company from time to time, as shown by the books.

T. T. Barbour (Recalled) on May 27, 1914.

(On behalf of Trustee in Bankruptcy.) [167]

I know about the value of the Washington Steel & Bolt Company plant up there. The land without the buildings is worth about \$30,000. The Buildings cost \$9000; put up six years ago; and aside from broken windows are in good condition. The tools and machinery cost \$32,000 and are worth from sixty to seventy-five per cent of cost. The machinery and tools are deteriorating in value. [168]

Hearing before JOHN P. HOYT, Referee in Bankruptcy, April 25, 1913 in Seattle, Wn.

Petitioner's Exhibit No. 2, certified copy of the mortgage deed of trust was received in evidence.

Mr. MURPHY.—(Statement of the Court.) We also served notice to produce the books of the company upon the trustee. That is the notice. (Counsel handed referee paper.) I will ask the Trustee to produce the minute book.

Mr. RUSSELL.—The notice to produce, if the court please, is to produce everything in the hands of the trustee. It would take a van to bring those things up here. If they had specified certain things within reason, that we could bring them here, we would have brought them if we had had them.

(Deposition of T. T. Barbour.)

Mr. MURPHY.—I think I specified the minute book.

The COURT.—All books of account, minute books and stock and bond books in your possession and belonging to the company.

Mr. MURPHY.—I specifically specified the minute book and that is the book I am now asking for.

Mr. CHAVELLE.—That book is not in our possession and never was.

Mr. MURPHY.—You have a copy of it.

Mr. CHAVELLE.—No.

Mr. MURPHY.—You never did have a copy?

Mr. CHAVELLE.—The book was stolen, your Honor, and never returned.

Mr. MURPHY.—As I understand, there was a copy made of the minute book, and they have it.

The REFEREE.—He says now he is only asking for the minute book, and not having the original, he inquires about the copy.

Mr. CHAVELLE.—If your Honor please, I understand there is no copy of the minute book. I have myself looked unsuccessfully for the book. The original book was stolen long before this bankruptcy proceeding. We have never been able to recover it.
[169]

Deposition of Mr. Pike, April 14, 1914.

(Witness on behalf of Washington Trust Company.)

My name is A. G. Pike.

I reside at Seattle.

I was treasurer of the Washington Steel & Bolt

(Deposition of A. G. Pike.)

Company almost continuously and secretary off and on until about the six months prior to the time that the company went into bankruptcy. At the time the company went into bankruptcy I was still supposed to be working for it. I was at that time located at Edmonds where the plant was situated, and had charge of the property of the company. I was the operating medium of the plant. I was a director of the company until within six months of the bankruptcy proceedings. A copy of the minute-book was in the office of the company at the time a trustee in bankruptcy was appointed. The original minute-book was purloined away sometime before by one of its former secretaries, Mr. Kelly, and has not been recovered since. (The witness was shown Exhibit No. 33 purporting to be a copy of the minutes of the Trustees' Meeting held June 29, 1909, and asked if that was a correct copy of the record of that meeting as shown by the minute-books.) I cannot say that I remember positively this wording of this meeting, but there was one meeting that was called at the request of Mr. McPhaden and the trustees.

Q. Was it your habit to send a copy of resolutions or the action of the board of trustees to The Washington Trust Company of all matters pertaining to the issuing of bonds under the trustee in question?

A. We usually called the Board together to act on those propositions.

If I remember right one time was all that the board was called together when there was a call for bonds. We would send copies of the minutes of the

(Deposition of A. G. Pike.)

meeting to the Washington Trust Company. I [170] was supposed to keep them supplied with copies of the minutes of what meetings were held. I did not send them a copy or a paper purporting to be a copy of any minutes that was false. All the copies purporting to be actions of the Board of Trustees sent to the Washington Trust Company from the office were correct copies. Mr. Beason was secretary at one time.

I am handed Petitioner's Exhibit No. 37 filed by Dora Beach while taking deposition, and I think that is a correct copy of the minutes of a meeting of the Washington Steel & Bolt Company. I was present at that meeting.

I am handed Petitioner's Exhibit No. 38 filed by said Dora Beach, and I know there was an action taken at the Board of Directors' meeting regarding this \$25,000 additional security. Just the details, the way this was written up, I do not remember, the details of how they were wrote up. I know there was a deal like that passed through. The Board of Trustees were authorized to deliver \$25,000 additional bonds to the Bank of Montreal. It was about April 16, 1911. Whatever the action of the Board was, it was carried out, at that time.

Cross-examination.

I think the Washington Steel & Bolt Company first started with five trustees and then it was increased to seven. I do not remember when the increase took place. I believe there were seven in March of 1911. It may have been seven in the be-

(Deposition of A. G. Pike.)

ginning and five later. I do not know which way it was, whether it was seven in the first place and two taken off or whether it was five and two added on. I could not tell you about that. I think Mr. Hall was one of them that was added and Yost, I think. I am not sure about that. There were seven I think at that time if I remember right, and they, Mr. Yost and Dr. Hall, were added. I think there were seven directors when Dr. Hall was on. I think I stated to you right in the first place; that is, that there were seven [171] and then reduced to five. Petitioner's Exhibit No. 37 shows three here. As I say, if there were seven on our directorate at that time there was only three present. If we had five we had a majority. I cannot recall; it is so long back. I know that we had five at one time and then seven, as I said before, I do not know which. It seems to me that Mr. Hall was one of those added but the minutes will show. I think Mr. Ammon and Mr. Hall were both there. Mr. Hall had a call over the 'phone, an obstetric case, and had to leave quick. This was taken up to his house that night for him to sign. He was a doctor. I know that Mr. Hall did not sign it before he left the office, but I could not say whether the resolution was passed before he left or not, but I know I took it up to his house. Maybe Mr. Barbour took it up to Dr. Hall for signing. Mr. McPhaden represented to me that most of the money turned into the company toward the wind-up of it was for the sale of stock that had been issued to him direct. There was very little treasury stock

(Deposition of A. G. Pike.)

that was ever sold. McPhaden turned over to the company the rail joint patent for the 1,400,000 shares of stock issued to him. We never made any demonstration of the patent and nobody ever did to my knowledge. The company never manufactured any of the rail joints covered by the patent.

Referring to Exhibit No. 37, I do not know whether George Olson prepared this or not. He prepared some of them for us. I believe he did that. I think there were regular notices issued for that meeting.

Redirect Examination.

In reference to the minutes of the meetings, I endeavored to act honestly and squarely. I think there was some preparations by attorneys to give us a plan by which to adopt certain things. We worked under advices of attorneys to do certain things at times, but I do not remember that this was one of those times. It [172] might have been but I do not remember that it was. The details of these things I do not remember. It has been so long that I cannot remember the details of these things like I probably should.

Referring to Exhibit No. 37, we did have a meeting this day, to the best of my memory. I think Mr. Hall seconded that motion. I stated that Mr. Hall was called out before the minutes were reduced to writing. The minutes were ordinarily written up after the meeting was held. Sometimes they were just jotted down and written up later. After they were written up, they were sent around to have the

(Deposition of A. G. Pike.)

signatures of the trustees. We always tried to have the signatures of all trustees upon all minutes. I do not remember that I recorded facts in the minutes that did not exist.

Q. Did you endeavor at all times as secretary of that company to incorporate in the minutes just what happened at the meetings?

A. That was what we had our meetings for.

Witness recalled.

Recross-examination.

The last year the plant run it made, I think, about twelve to thirteen thousand dollars. [173]

Deposition of A. G. Pike, May 21, 1914.

(Witness on behalf of the Trustee in Bankruptcy.)

(Witness is shown Trustee's Exhibit "G" consisting of two sheets.)

That is McPhaden's handwriting. I thought the other sheet was there until my attention was called to it. It must be at home. (This and other letters, Exhibits "A," "B," "C," "D," "E," "F" and "G" admitted in evidence.)

Cross-examination.

I suppose Mr. McPhaden has the letters I wrote in answer to the letters filed in evidence. I kept no copy.

Witness Recalled by Trustee.

The books of the company do not show any bonds issued. There is no bond account kept at the office. The trustee kept the bond account is my recollection. There were two \$100 bonds sold for cash and the

(Deposition of A. G. Pike.)

money turned into the company, and that is all that were sold for cash. The rest of them were taken in accounts for the company. I do not know to whom those two bonds were sold.

Cross-examination.

I knew that Mr. McPhaden was giving some of his time to the selling of these bonds.

McPhaden always had a credit on the books for money paid in when he took the bonds out. [174]

Redirect Examination.

I know what patent the bonds claimed to be owned by J. H. Osborne were given in payment of. It was a water regulator for feeding a boiler automatically. The company never tried to get any value out of it. They never tried to make it or sell it. It was not tested out, simply got the right and did nothing with it.

Recross-examination.

The bonds which were given to Osborne in payment of his patent did not come out of the treasury of the company. They came from McPhaden's bonds. It is not a fact that Osborne sold the company this patent for so much money, or that the company complained of the patent and McPhaden compromised with Osborne by giving the company the patent and paying Osborne in his own stock. He gave Osborne his own bonds, the bonds that had been issued to him.

A. G. PIKE (recalled) on May 27, 1914.

(On behalf of Trustee in Bankruptcy.)

The land up there, exclusive of buildings, is worth

(Deposition of A. G. Pike.)

from \$33,000 to \$35,000. The buildings are worth \$9,000. The tools and machinery are worth some thirty to thirty-five thousand dollars. No machine does any good standing still. The plant would bring a better price if sold now than in the future. [175]

Deposition of H. E. Watson on April 27, 1914.

(Witness on behalf of Trustee in Bankruptcy.)

I have resided in Seattle about four years, engaged in the real estate business. I first became connected with the Washington Steel & Bolt Company about three years ago. In the first place I was simply trading stock with McPhaden and Pike. That was the way I got started in it. Then I made another trade with McPhaden. I acquired more or less stock. There was a time when I became president of the Washington Steel & Bolt Company and one of the Board of Directors. There was a meeting held after we were elected, but everything that was done was done at the suggestion of Mr. McPhaden; the affairs of the company were conducted for the benefit of McPhaden. Whatever he wanted done he notified the Board of Directors and they did it. There was never a meeting that I know of after that time. In other words, the affairs of the Washington Steel & Bolt Company were being conducted for the benefit of A. McPhaden. I cannot remember the day I became President and Director. Approximately, it was about three years ago as I remember. There were no dividends declared while I was connected with the company. I was told there was a dividend just before that.

(Deposition of H. E. Watson.)

I have had several conversations with Pike and A. C. Gunn, and McPhaden, after this proceeding in bankruptcy relative to the affairs of the Washington Steel & Bolt Company. They were figuring on organizing a new company. McPhaden told me that the Bank of Montreal was simply working under his instructions. I do not know when the first conversation with Pike, Gunn and McPhaden was had. I never saw the minute-book of the Washington Steel & Bolt Company. I did see a copy of it in my office in the Arcade Building. I had it about a week and turned it over to Gunn and McPhaden. McPhaden [176] came and got the book. He lives on the Snake River. He got the place, 320 acres, from me. He took the title in his brother's name. He told me he took the title that way so his creditors couldn't get it. That place is worth \$35,000. The Bank of Montreal holds about \$8,000, of my paper—my company paper. The notes were to McPhaden and I paid them to him, taking his receipt therefor. He put them in the Bank of Montreal. The bank still holds them and refuses to turn them over.

I have known McPhaden for seven years. He was then living in Spokane. I was living in Spokane. I was acquainted with the speech of people generally speaking in Spokane to a certain extent. I learned what his reputation was for truth and veracity. It was bad. Judging from the speech of people I do not deem it advisable to credit him as a witness. From the speech of people I would not believe him.

(Deposition of H. E. Watson.)

Cross-examination.

Q. Then when he gave you some wild stories about the Bank of Montreal doing just what he wanted them to do, you did not believe them?

A. I did at the time until I found him out.

Q. You don't believe it now, do you? A. No.

There must be something wrong or the bank would not be holding my notes. I gave McPhaden \$15,000 in the first place. \$7,000 I got back. The others the bank has. I paid the others, the \$8,000 to McPhaden about the time they became due, before they were due, I think. I have letters written by him acknowledging the payment of the notes and acknowledging that the bank has no right to hold them. They were paid in the land deal. I took another piece of [177] land he had in the Big Bend country, and turned him this ranch for the notes and was to get some money. I never got the money or these notes. He owes me in the neighborhood of \$3,500 on that deal. Besides this he owes me in the neighborhood of seven or eight hundred dollars, making a total of about \$4,200. I do not sue him or go after this land simply because I am like the rest of us. I do not see how I can and I cannot fight him.

I became president of the Washington Steel & Bolt Company some time in May of 1911, and continued to be president until the trustee in bankruptcy was appointed. I was living at that time in Seattle. I never lived at Edmonds. I do not know what the trustees who lived up there might have done. I continued president until the bankruptcy proceedings.

(Deposition of H. E. Watson.)

I do not know who preceded me as president. I was not a trustee of the company before I became president. Until I became president of the company I, had nothing to do with the actions taken by the Board of Trustees from time to time. McPhaden told me that he was trying to reorganize the Washington Steel & Bolt Company. He told me that he and Gunn were trying to reorganize the company and that they borrowed some money from McPhaden's brother to pay off the indebtedness against the plant. One of the things he was going to pay was a \$375 check that he gave me. One day I asked him why he didn't pay that, told him, "You have got the money from your brother, you know I need the money." He said, "If you need money, you go get it. I get all the money I want, and there isn't a son-of-a-bitch of a stockholder who will get it."

Redirect Examination.

Q. What became of the old board of trustees at that time? A. They all dropped out.

Q. At whose suggestion, McPhaden's, and a new board elected by McPhaden? [178] A. Yes.

At the time Gunn and McPhaden first took up the question of a reorganization of the Washington Steel & Bolt Company, they talked to me as tho they were going to reorganize it among the people who were in on it. Afterwards, it was different altogether. They were going to organize it themselves and leave the stockholders out. That was the time that he told me that not a son-of-a-bitch of a stockholder would ever get a cent out of it. [179]

Deposition of W. R. Ammon on May 21, 1914.

(Witness on behalf of Trustee in Bankruptcy.)

I have resided at Edmonds for about five years. I was at one time connected with the Washington Steel & Bolt Company as Vice-President. Mr. McPhaden and Mr. Pike were in control of its affairs. In the main, Mr. McPhaden would dictate any correspondence to Mr. Pike, what he wanted done. The resolutions were brought to me as they wanted them passed. Sometimes we had a meeting and sometimes not. They would bring them to me wherever they caught me about Edmonds. In some cases I would sign them, and some not. I own something around 36,000 shares of stock. I purchased them from Mr. Pike. Part of the consideration was services. I paid no monetary consideration. I became a director about six months after I went to Edmonds, five years ago. I was director of the Washington Steel & Bolt Company down to the bankruptcy proceedings.

I am in the electric business at Edmonds, selling power and light. My electric light plant joins the property of the Washington Steel & Bolt Company. The land of the Washington Steel & Bolt Company is worth between \$30,000 and \$40,000 and the buildings are worth about \$6,000. I identify the signature of letters marked for identification Exhibits "A," "B," "C," "D," "E" and "F" as that of Mr. McPhaden, once the president of the Washington Steel & Bolt Company. I do not recall that I ever saw the letters before. I know the handwriting.

(Deposition of W. R. Ammon.)

Regarding any meetings of the Board of Directors at the company's office, or anywhere else, as a body in which any action was taken relative to the issuance of bonds of the company, I could not be positive as to that. There was early in the game, when I first went there, there was either a meeting called to ratify the issuance of bonds or float a bond issue. [180]

The bonds referred to at that meeting of the Board of Trustees were part of them issued to McPhaden and part to Pike. I do not just remember. The bonds issued to McPhaden were issued to him in payment of moneys that he claimed to have advanced to the company, as I understood it, and those are the bonds I have in mind. I do not remember at what price McPhaden took the bonds. I do not recall any other meeting of the Board of Directors where they got together where any resolution for a bond issue was adopted, passed or presented. The resolution I signed at the office of the company on one occasion was one gotten out by Mr. Olson purporting to be a meeting of the directors authorizing them to issue bonds for \$25,000 payable to the Bank of Montreal, or someone like that, as near as I can remember. I was called by telephone to come to the bolt works, and sign a resolution. After getting there I read the resolution and said to the secretary, Mr. Barbour, "Is there any danger of getting in any trouble by signing this?" And he said that it was not worth the paper it was written on. I signed it. Barbour was not a director. Pike was not pres-

(Deposition of W. R. Ammon.)

ent. I was the only director present. Dr. Hall came in afterwards and as I remember asked about the same question that I did. Dr. Hall signed it. At that time he and I were the only directors present. (Petitioner's Exhibit 37 shown witness.) Such a resolution as that, or a resolution of which that is a copy, was never passed by the Board of Directors sitting as a Board of Directors.

There was supposed to be five directors at that time, three of us dead ones. I have no recollection of the number of the directors being changed. Mr. Pike usually brought the resolutions to me for signing.

Cross-examination.

The Washington Steel & Bolt Company was the first time I [181] ever held office in a corporation. I did not take an oath as Vice-President or as trustee—I was not asked to. I do not remember the date when I was made director. I attended a stockholders' meeting each year.

I do not remember attending any other meetings. Whenever they called me I went.

I do not remember attending any meetings except the stockholders' meetings. I never signed any statement pertaining to the Washington Steel & Bolt Company that was false. Every statement that I signed was a truthful statement, so far as I know. I did not say that I remember having signed certain papers brought to me by Mr. Pike. I said that this particular resolution was handed to me by Mr. Barbour to sign. I do not remember of any other resolutions having been handed to me for

(Deposition of W. R. Ammon.)

signing. To tell the truth, I remember very little about it. I told you why I remembered that. I was very explicit in that line. I never at any time signed any statement purporting to be a resolution, which was false, to trick the Bank of Montreal or anyone else. Whatever I did was in good faith absolutely. I took the word of the others. I said that sometimes I signed resolutions and papers that were passed to me and sometimes not. Well, whenever it was legitimate, what I thought was right. I exercised my own judgment so far as they would give me to understand the motive of the business, what they were doing. I never signed anything blindly, not [182] knowing about it. As a matter of fact, I do not remember very much about what I did as an officer of the company. Just routine business; that is all.

Redirect Examination.

I ascertained whether the statements that I signed were true or false through Mr. Pike. He would say that they wanted to do so and so, and were going to get this money here and that money there, and wanted a resolution to that effect or McPhaden would write over his instructions for him to carry out. I took for granted that what they said was true. I did not examine the books.

Recross-examination.

I depended upon Mr. Pike for the statement of fact in reference to finances. He was the treasurer and secretary and manager, but so far as declarations of fact concerning myself are concerned, I made no

(Deposition of W. R. Ammon.)

false statement. I never signed one, not that I know of. I never made a false statement as to what I did or did not do. [183]

Deposition of A. M. Yost on May 21, 1914.

(Witness on behalf of Trustee in Bankruptcy.)

I live at Edmonds and have resided there for twenty-four years. I used to be in the mill business. I am not doing anything at present. I have retired. I do not know whether I was connected with the Washington Steel & Bolt Company or not. I bought a few shares of stock, \$1000 or something like that from Mr. Pike, and the first thing I knew after that they called me a trustee. I attended one meeting and immediately resigned. I stayed there and listened to the doings just what it was, and then resigned right after that. That disgusted me. That meeting was in the fall of 1908, as near as I can remember. I do not recollect that there were any resolutions passed at that meeting for the issuance of bonds. I never signed any resolutions to my knowledge, authorizing the issuance of bonds. Mr. McPhaden seemed to me that he was the whole thing and the only thing. I got disgusted at once because I did not want anything to do with a one-sided arrangement. That is what caused my resignation at once.

I do not know that I ever was a director. I attended one meeting and resigned right away. I didn't know I was a director until the day before it was called. I got a notice of the meeting from Mr.

(Deposition of A. M. Yost.)

Pike. I was never sworn in as a director to my knowledge.

I am connected with the Spring Water Company furnishing water to the city of Edmonds. I do not know as I ever knew Mr. McPhaden until the day they appointed me and introduced me to him. That was the first time I saw him to my recollection. In fact, it was the last time I guess. I have heard discussions among the people at Edmonds as to the reputation for truth and veracity of Mr. McPhaden, talks on the streets. I know the opinion of people in and around Edmonds touching his truth and veracity. From the speech [184] of people around Edmonds his reputation for truth and veracity is bad. Based upon that reputation I would not deem him entitled to credit as a witness.

Cross-examination.

I never saw McPhaden but once; do not know whether he was in Edmonds very much or not. Edmonds has a population of 1000 or 1200 people. I knew Mr. Pike was the man in charge of the Washington Steel & Bolt Company. I knew Mr. McPhaden lived and operated in Spokane during that time. It is generally a fact that when a person promotes an enterprise of any kind and for any reason that enterprise becomes a failure or passes into the hands of a receiver, leaving debts, it always casts an odium upon the person promoting it, no matter how sincere he may be, and I presume whatever bad reputation Mr. McPhaden may have in Edmonds

(Deposition of A. M. Yost.)

is due very largely to the fact that his enterprise there was a failure and did not pay its debts. [185]

Deposition of Dr. H. W. Hall, May 21, 1914.

(Witness on behalf of Trustee in Bankruptcy.)

I have resided at Edmonds for ten years last passed. Have been during said time a physician and surgeon in practice there. There was a time when I was connected with the Washington Steel & Bolt Company. I could not state, with reference to the books of the company, when that connection began. I think I was director about two years. I do not know. I resigned I think just before the bankruptcy proceedings. My impression is—but now it might have been—I don't think it was over three years—I think it was about two years.

I own somewhere between one and two hundred shares of stock of the Washington Steel & Bolt Company. I acquired it from Mr. Pike. I paid cash for it. I do not know how long after I acquired the stock I was elected trustee, I think a few months after. That is my impression. Of course, I cannot give anything exact because it was a long time ago and I did not keep any notes on it. I think I was elected at one of the annual meetings but it seems to me that I was on the Board of Trustees before that, but of course, this whole matter is rather hazy. I never took an oath of office as trustee in that concern and I never saw anybody else take an oath as trustee, no oaths administered. During the time I was trustee some of the resolutions were

(Deposition of Dr. H. W. Hall.)

passed at the office, and some of them were written up and brought around to us to sign purporting to be a meeting. I could not say how many meetings of the Board of Directors I attended while I was director. I know there were several.

Q. Do you recall the signing of a resolution providing for the issuing of \$25,000 of bonds to the Bank of Montreal as collateral for a loan that the bank was carrying? [186]

A. I remember I signed something for some bonds, but I do not remember much about it.

It seems to me there were two batches of bonds issued. That is my recollection but I won't be sure about it, and my impression is that I signed them both. I could not say whether I signed them at the office or at home. I know I had some meetings at the office and some were brought to me. I think the first resolution for bonds we signed was at the full board meeting. A part of the time the board consisted of five and a part of the time I think it was seven members. I mean I think it was three and five members. Isn't that right? I know after a time the number was reduced so that it would make three of us in town, a majority of the board. The three were Mr. Pike, Mr. Ammon and myself. I heard the testimony of Mr. Ammon concerning the signing of the resolution of the Board of Directors touching the issuing of \$25,000 in bonds. I recall going to a meeting, but now I could not say what meeting it was. I remember coming in from the country from Lake Ballinger and going down late

(Deposition of Dr. H. W. Hall.)

to a meeting when Mr. Ammon and Mr. Barbour, I think, were the only ones there. I think I signed a resolution at that time. I would not swear positively. At the time I signed the other resolution for the issuance of bonds it seems to me there were present Mr. Pike, Mr. Ammon and Mr. McPhaden and Mr. Barbour. That is my impression. Mr. Barbour was not a trustee. He was book-keeper. It seems to me that was the first batch of bonds. I do not remember, I could not say whether those went to Pike and McPhaden or the Bank of Montreal. One meeting took place before the other. I do not know whether it was a month or several months between them, the first meeting when we had a full board there. The first meeting, as I remember, was not at the first part of my term. It might have been rather toward the latter part. I think [187] that the full board was present at the first meeting, and the time Ammon and I were there alone, it is my impression, was the latter meeting. There were times when resolutions were brought to me to be signed purporting to have been the resolutions of the Board of Directors when there was no meeting. They told me it was the same thing if we agreed upon those things that were brought to us; it was the same thing as a meeting; that the effect was the same as if we had a meeting. It was written up for us to sign. During the time I was director it was very evident that Mr. McPhaden was the whole thing. The letters directed what was to be done and I think those directions were usually carried out.

(Deposition of Dr. H. W. Hall.)

Cross-examination.

We, the directors, always acted in good faith, and every letter which came from McPhaden was considered by me as a man; that is, I exercised my judgment in reference to it, and I never knowingly passed a resolution of that company which would operate injuriously to it or to the damage of anyone else and whenever I followed the directions of Mr. McPhaden it was my best judgment that those directions should be carried out. And when these letters of McPhaden were read we discussed them and if he had directed us to do anything which would seem to us injurious to the company we would not have acted or carried them out. Now, referring to the resolutions which were brought to me to sign, and which were signed not in a meeting, I will state that we saw each other almost daily or frequently, and we discussed the matters of the Washington Steel & Bolt Company. I do not think,—I never did sign a resolution but what was talked over more or less and I never signed a resolution upon which our minds had not agreed; that is, agreed that it was the best thing to do. When I came down from Lake Ballinger on that occasion, Mr. Ammon and Mr. Barbour were there. I don't think Mr. Pike was there. Mr. Ammon was Vice-President and I was a trustee at the time. [188]

The other trustee was Mr. Pike and I think there were two in Spokane. I am not sure that I had talked this resolution over previously with Mr. Pike. I do not remember that I did. Of course,

(Deposition of Dr. H. W. Hall.)

this is several years ago and I kept no record of it. I did not, to my knowledge, subscribe to any resolution or any declaration which was a falsehood. I did not intend to surely. It may have been misrepresented to me in that way. That is, some fact or financial condition may have been misrepresented, but as to any act of my own, I never subscribed to a falsehood,—not intentionally. Papers have been handed me to sign purporting to be meetings when there was really no meeting, but we talked it over and agreed upon it and the paper was brought to us to sign. Of course, I would not want to say that we had a meeting although the paper said we had a meeting. It was a lie, you know. I have done that, but as I understood it, it amounted to the same thing. I never intentionally caused to be recorded in the books of the company any resolution or statement for the purpose of deceiving anyone in acting on what appeared there. As I understood it, the resolution in reference to the bonds given to the Bank of Montreal was to put up those bonds with the Bank of Montreal and the Bank of Montreal would give them the money to run the plant. That is my recollection. I did not know very much about the financial condition. Mr. Pike often told me he was going to explain it to me but never got around to it. I do not know the period that my office covered. We talked the matters in reference to the resolutions over sometimes on a street corner and wherever we happened to be, sometimes in Ammon's office.

Q. But not at a meeting of the Board of Directors?

(Deposition of Dr. H. W. Hall.)

A. If we had it talked over at a meeting of the Directors we would vote there and record it. [189]

Resolutions even after a meeting at the office would be written up and sent to us to sign or ratify what we voted at the meeting.

Redirect Examination.

As a matter of fact, I made no personal investigation as to the condition of the affairs of the company at the time of signing any of these resolutions further than asking Pike or McPhaden. I did not know what I could have found or where else to go except to them. These various resolutions that I signed, were, I think, nearly always asked for by Mr. McPhaden. [190]

Deposition of C. F. Chapin.

Introduced and received in evidence taken at the request of Washington Trust Co. in Spokane, Washington, Feb. 20, 1914.

My name is C. F. Chapin, age 55. I reside at Coeur d'Alene, Idaho. I am the owner of some of the bonds issued by the Washington Steel & Bolt Company. I purchased first three \$500 bonds in the office of the company in Spokane. I cannot state the date exactly. I think the first year they were issued in 1908. My recollection is that I bought them soon after they were issued. I paid 90¢ on the dollar, say \$1500 worth of bonds, I think it was \$1350; anyway it was 90¢ on the dollar. I purchased two \$500 bonds of E. M. Gallant later on, on the second day of April, 1909. I considered that I paid

(Deposition of C. F. Chapin.)

par for these. I bought some other stock with them, 20,000 shares of stock in the Sauve Electric Coil Company, 14,000 of the Washington Steel & Bolt Company and \$1000 worth of bonds of the Washington Steel & Bolt Company. For all of this I paid \$2,500 and received a receipt for the purchase price. (The receipt was received in evidence and marked petitioner's exhibit "1.") I do not recall what price was fixed upon the \$1000 worth of bonds which I purchased under this agreement, but I considered I was paying par value and that they were worth it. I was interested in the company, had a lot of the stock and I certainly thought the bonds were worth par. There was no value to this other stuff that I got in this transaction. There was no market value for any of it really, there was no real market for it, no real sale for it. I have five bonds, in regard to which I have just testified. (Chapin's bonds were received in evidence and marked petitioner's Exhibits 2, 3, 4, 5 and 6.) Exhibits 2, 3 and 4 were the first purchase. [1901½] These bonds were purchased by me in the due course of business. I paid for them by check. I do not think that I saw the deed of trust securing the bonds prior to the time of purchase; that is my recollection, I never saw it.

Q. Had you received any information as to what the deed of trust contained or as to how the bonds were secured?

A. Why, I think I was told they were secured on the property there, that is my recollection.

None of the coupons have been paid which are now

(Deposition of C. F. Chapin.)

a part of the bonds and have not been clipped. At the time I acquired these bonds I had no knowledge or notice that their validity was questioned, or that they were in any way criticized or any objection raised to the legality of them. I purchased and paid for each of them in good faith believing that they were legal and valid. I consented to the Washington Trust Co's. proceeding to foreclose the mortgage or trust deed upon the property of the Washington Steel & Bolt Company.

Cross-examination.

I have been a stockholder in the Washington Steel & Bolt Co. about five years, to the best of my recollection. I was a stockholder before the plant was in operation. I bought stock for the purpose of building the plant, and it was before the date of these bonds. Just what date I cannot say. I was at no time a director nor did I participate in the stockholders' meetings that authorized the making of the trust deed. I never took part in any of the stockholders' meetings. To the best of my recollection, I am very sure I did not. I purchased the first three bonds in the company's office of McPhaden who was the president of the company, and I understood I was buying of the company. At that time I think I owned 10,000 shares of stock of the Washington Steel & Bolt Company. I am a rancher. My business has been mining principally, [191] but I have not done any recently. My business was not dealing in stock and bonds. I invested in the stock of the Washington Steel & Bolt Com-

(Deposition of C. F. Chapin.)

pany as a speculation but as to the bonds as an investment. I got acquainted with McPhaden about the time I bought the first stock. I was one of the first stockholders. [192]

Deposition of Meta McElroy.

Received in evidence taken at the request of Washington Trust Co., in Spokane, Wn., on Feb. 20, 1914.

My name is Mrs. Meta McElroy; age 51. I reside in Spokane, Washington, and have lived there sixteen years. I am the owner of some of the bonds of the Washington Steel & Bolt Co. I purchased one bond of \$1,000 and one of \$500 on Sept. 26, 1908. These were purchased from Mr. A. McPhaden and I paid \$1,500, for them by check. (The check was received in evidence and marked Petitioner's Exhibit 7.) I later purchased on June 16, 1909, five \$100 bonds from L. R. Van DeBogart, a former partner of McPhaden. I paid for these bonds \$100 in cash and \$360 in check, making \$460. Those are all the bonds I purchased. At the time of the purchase I had no notice or knowledge that their validity was questioned, or that any question had been raised as to their validity in any way. I am willing to have the foreclosure proceeding for the benefit of myself and other bond holders. At the time I purchased the bonds I understood they were secured by the factory, its output and the property of the Washington Steel & Bolt Company. I understood there was a first mortgage securing them. (The check for \$360 was received in evidence as Petitioner's Exhibit 8. Also bonds Nos. 700 and 706 belonging to Meta Mc-

(Deposition of Meta McElroy.)

Elroy were received in evidence as Petitioner's Exhibits 9 and 10 and bonds numbered 439, 440, 441, 442 and 446 were received in evidence as Petitioner's Exhibits 11, 12, 13, 14 and 15.) I purchased bonds Nos. 700 and 706 first.

Cross-examination.

I understood that McPhaden was selling me the bonds for the company. I was a stockholder in the Washington Steel & Bolt Co. at the time I bought these bonds. I never attended any of the [193] meetings of the stockholders, and have never seen the trust deed in question or a copy of it.

Redirect Examination.

None of the interest has been paid upon the coupons annexed to the bonds. There have been six semi-annual payments of interest made on each bond. [194]

Deposition of W. J. Ambrose.

Received in evidence taken at the request of Washington Trust Co.

In Spokane, Wn., on Feb. 20, 1914.

I am manager of the Spokane Branch of the Bank of Montreal. The Bank of Montreal holds \$47,900 worth of bonds of the Washington Steel & Bolt Company, which are secured by trust deed or mortgage of the Washington Trust Company. These bonds are now in the possession of the Bank of Montreal. The following bonds held by the Bank of Montreal were received in evidence: Nos. 702, 704, 705; 708 to 716 both inclusive; 718 to 732, both inclusive; being 27 bonds of \$1000 each; Nos. 661, 663, 667 to

(Deposition of W. J. Ambrose.)

671, both inclusive, 674 to 690 both inclusive; 695 and 699, 26 bonds of \$500 each; 291 to 300, both inclusive—10 bonds of \$100 each; 665, 666, 672 and 673—4 bonds of \$500 each; 703 and 707—two bonds of \$1000 each, 399 to 407, both inclusive, nine bonds of \$100.00; 691 to 694, both inclusive, four bonds of \$500 each.

(Bonds received in evidence in packages, as Exhibits 16, 17, 18, 19 and 20). We hold these bonds as collateral security for advances made to the Washington Steel & Bolt Company amounting in all to \$20,000 made as follows: On May 1, 1909, \$10,000; on May 11, 1909, \$5,000.00; on June 16, 1909, \$2,500.00 and on July 28, 1909, \$2,500.00. This indebtedness is evidenced by promissory notes executed by A. G. Pike and A. McPhaden in favor of the Washington Steel & Bolt Company and endorsed by it. The money was loaned directly to the Washington Steel & Bolt Company and the transactions were had in the ordinary course of business of the bank. The money was loaned upon the faith of the collateral security or the bonds. The Bank of [195] Montreal requested the Washington Trust Company in writing to foreclose on the mortgage or trust deed securing the bonds. (This written request dated Feb. 19, 1912, was received in evidence as Petitioner's Exhibit 21.) No portion of the principal represented by the notes has been paid. Interest has been paid upon the notes up to December 23, 1910. The endorsements upon the back of each of the notes show this to be so. (The four promissory

(Deposition of W. J. Ambrose.)

notes were received in evidence as Petitioner's Exhibits 22, 23, 24 and 25.) To the best of my knowledge, the bank had no notice of any claim on the part of anyone that the trust deed was invalid at the time the loans were made.

Cross-examination.

I have been manager of the Spokane branch of the Bank of Montreal since July 1, 1912. Prior to that time, I had no connection with this branch. The testimony which I have given relative to the giving of these notes, Exhibits 22 to 25 inclusive, and the turning over to the bank as collateral, of the bonds Exhibits 16 to 20, inclusive, is not from any personal knowledge that I have concerning the matter, but from the records of the bank. At the time these notes were given and these bonds were turned over to the bank, A. H. Buchanan was manager of the bank. He died in October, 1912. Personally, I have no knowledge of the transaction between either the Washington Steel & Bolt Company or McPhaden and Pike at the time of the execution and discount of these four notes, nor have I any knowledge of the transactions which took place between the Bank of Montreal and the Washington Steel & Bolt Company or McPhaden, or Pike, or any of them, at the time these bonds were turned over to the bank, except from the record of the bank. The bank holds other security, collateral to these notes, viz.: eight \$1000 notes of the West Coast Investment Company, all dated June 26, 1911, drawn on demand; also [196] three notes signed by C. O. and S. S. Bassetts—all dated

(Deposition of W. J. Ambrose.)

Dec. 1, 1909, one for \$2,000, payable Oct. 1, 1911; one for \$1,500 payable Apr. 1, 1912; and the other for \$1,750.00 payable Oct. 1, 1912. All these notes were made payable to A. McPhaden and endorsed by him. We also hold 75,049 shares of Alder Creek Mining Company stock—par value \$1.00 each. The Washington Steel & Bolt Company got credit in its account in the bank for the \$20,000.00 proceeds of the four notes. The checking account was closed about 1910, I think. I presume it was balanced.

Redirect Examination.

The records of the loans and collateral of the Washington Steel & Bolt Company are the same as of any other loan with collateral. The Bank of Montreal has never realized anything upon any of the other collateral which I have testified it holds. I am informed the West Coast Investment Co. has no assets. We have been unable to collect any money from the Bassetts although we have made several attempts by personal requests and by letter. The mining stock has no present market value. [197]

Deposition of R. L. Webster.

Received in evidence taken at request of Washington Trust Company, in Spokane, Wn., on Feb. 20, 1914.

My name is R. L. Webster, age 43; I reside in Spokane, Washington. I am Secretary of the Washington Trust Company, and have been for over ten years. I am acquainted with the transactions between the Washington Steel & Bolt Company and

(Deposition of R. L. Webster.)

the Washington Trust Company. To the best of my knowledge the mortgage deed or trust deed was signed by me as secretary on Sept. 9, 1908. As trustee under the deed of trust the Washington Trust Company certified bonds as follows:

November 16, 1909, Nos. 291 to 295, inclusive, par value \$100 each; February 26, 1910, Nos. 296 to 300, inclusive, par value \$100 each; December 9, 1908, Nos. 399 to 407, inclusive, par value \$100 each; September 17, 1909, Nos. 408 and 446 par value \$100 each; December 18, 1908, Nos. 409 to 438, inclusive, par value \$100 each; September 23, 1908, Nos. 498 to 500, inclusive, par value \$100 each; September 23, 1908, Nos. 564 to 700, inclusive, par value \$500 each; September 23, 1908, Nos. 701 to 750, inclusive, par value \$1000 each; January 8, 1909, Nos. 439 to 445, inclusive, par value \$100 each.

I certified the bonds attaching my signature to the certification blank on the bond as secretary and recorded them in our records. Some of the bonds certified by us were later presented to me to be registered. The Bank of Montreal presented bonds 291 to 300 inclusive, 399 to 407 inclusive; 661 to 663, 665 to 695, both inclusive; 699, 702 to 705, both inclusive; 707 to 716, both inclusive; 718 to 732, both inclusive; 662 and 664. With the exception of Nos. 662 and 664 the bonds of the Bank of Montreal were registered on the 12th day of June, 1911. Numbers 662 and 664 were registered on January 13, 1912. There were also registered in the name of C. F. Chapin on [198] March 1, 1909 bonds Nos. 696 to

(Deposition of R. L. Webster.)

698 inclusive. Bonds Nos. 439, 440, 441, 442, 446, 700 and 706 were registered in the name of Mrs. Meta McElroy, on Feb. 19, 1914. These are all the bonds that were registered. Bonds numbered 301 to 398 both inclusive, 447 to 497, both inclusive, 501 to 563, both inclusive, and Nos. 564 to 652 both inclusive have not been certified. The bonds which I have testified to as having been certified and those which I have testified to as not having been certified constitute the whole bond issue of the Washington Steel & Bolt Company. Bonds Nos. 410 to 438 both inclusive and 655 to 660 both inclusive, are now in our possession and have not been negotiated. R. J. Danson delivered bonds 410 to 438 both inclusive and 655 to 660 both inclusive, to the Washington Trust Company. They belonged, to the best of my knowledge and belief, to J. H. Osborne of Chicago, Illinois.

(Mr. DANSON.—We now offer as part of the evidence of the witness said bonds Nos. 410 to 438 both inclusive and 655 to 660 both inclusive, and ask that they be made a part of the deposition of said witness.)

Mr. RUSSELL.—I object to their being received in evidence on the ground that there is no competent proof to show that these bonds have ever been negotiated by the Washington Steel & Bolt Company.

Upon bonds 408 to 660 both inclusive and on bonds 662 and 664 the interest has been paid to September 1, 1911. I mean that interest due to September

(Deposition of R. L. Webster.)

1, 1911, has been paid on these bonds. No other interest has been paid on any of the outstanding bonds of the company other than what I have just testified to. The Washington Trust Co. was requested in writing by the Bank of Montreal and by J. H. Osborne of Chicago to foreclose on the trust deed. The request of J. H. Osborne was under date of August 29, 1912. (This request of Mr. Osborne was received in evidence and marked petitioner's Exhibit 26.) We have not at present any other bonds in our possession which have been certified by us and negotiated by the Washington [199] Steel & Bolt Company other than those which have been offered in evidence belonging to J. H. Osborne of Chicago.

Cross-examination.

All the bonds of the Washington Steel & Bolt Company were certified by me personally as secretary of the Washington Trust Company. They were not certified to at the same time. As they were certified they were placed in our vaults or delivered by orders from the Washington Steel & Bolt Company. They were given out at different times. The bonds were delivered either by myself or someone authorized by me and were delivered upon the written request of the Washington Steel & Bolt Company, and were delivered as therein requested.

Q. Did you have any means of knowing what consideration, if any, was paid to the Washington Steel & Bolt Company by these various parties to whom you were directed to issue and deliver bonds?

(Deposition of R. L. Webster.)

A. In the case of the bonds delivered to the Bank of Montreal, the minutes of the Directors' meeting showed that these bonds were to be placed in the Bank of Montreal as collateral on a \$20,000 loan. In the case of the bonds sent to A. McPhaden under date of Feb. 26, 1910, we had letters and a statement and the minutes of the Board of Directors of the Washington Steel & Bolt Company setting forth a statement of A. McPhaden's account with the Washington Steel & Bolt Company, which was to be settled by the acceptance of the Washington Steel & Bolt Company by A. McPhaden. Mr. McPhaden's account with the Washington Steel & Bolt Company, according to the statements furnished, was to be settled by bonds at 90¢ on the dollar. The Washington Trust Company made written demand on the Washington Steel & Bolt Company for the payment of the interest on the bonds as provided in the trust deed on September 1, 1911. It was transmitted by telegraph. [200]

Redirect Examination.

We have a number of the records of the minutes of the meetings of the Board of Directors of the Washington Steel & Bolt Company.

Q. Now, I ask you to produce the written request, also the records of the different meetings of the Board of Directors of the Washington Steel & Bolt Company, which were furnished you. (In response to this question these requests and records were introduced and received in evidence as Exhibits Nos. 27 to 39, both inclusive.)

(Deposition of R. L. Webster.)

Recross-examination.

We have not the minute book itself containing the minutes of the Board of Directors of the Washington Steel & Bolt Company. We have no authenticated copy of all of their minutes. We have signed and authenticated copies of some of the minutes, and which are the ones produced in evidence. Other than these we have no other copies or purported copies of the minutes of the meetings of the Washington Steel & Bolt Company. [201]

Deposition introduced and received in evidence.
Taken at the request of Washington Trust Co.

Deposition of Jacob H. Osborne.

Taken in Chicago, Illinois, Mar. 24, 1914.

I reside in Chicago, Illinois. I am in the real estate and bond business and have been for eight or ten years. I know the Washington Steel & Bolt Company, the Bankrupt in the above-entitled action. I am the owner of some of the bonds executed by that company secured by the trust deed or mortgage executed by that company to the Washington Trust Company under date of Sept. 1, 1908. These bonds were purchased by me from A. C. McPhaden, President of the company, whom I believed and still believe to have been acting in its behalf. The bonds purchased were eight bonds of the denomination and par value of \$500 each, thirty bonds of \$100 each, making a total of \$7000., which I paid for the bonds. These bonds at the present time are in the hands of my attorneys, Danson, Williams and Danson of Spokane, Washington. Nothing has been paid on ac-

(Deposition of Jacob H. Osborne.)

count of the principal. To best of my recollection, the last interest coupons paid were the coupons which fell due September 1, 1911, and no part of the interest accruing upon the bonds and evidenced by such coupons payable at any date subsequent to Sept. 1, 1911, has been paid.

I requested the Washington Trust Company to proceed to foreclose its mortgage. My letter was dated August 29, 1912. This letter was received in evidence and is petitioners' Exhibit "26."

Cross-examination.

I do not know the exact date of the purchase of these bonds. According to my best recollection, I purchased them in the fall of the year 1909. They were bought from the Washington Steel & Bolt Company through Mr. McPhaden, President of the Company. They were purchased at the same time, as one transaction. I paid \$7000.00 for the bonds with funds in the hands of Mr. McPhaden belonging to me. [202]

Hearing before JNO. P. HOYT, Referee in Bankruptcy, November 20, 1912 in Seattle.

Deposition of A. C. Gunn.

(Witness on behalf of Washington Trust Company.)

My name is A. C. Gunn. I reside in Seattle and my business is real estate and banking. I am acquainted with the property of the Washington Steel & Bolt Company and also with Mr. Chavelle, Trustee in Bankruptcy of that company. Mr. Chavelle and

(Deposition of A. C. Gunn.)

myself had several conversations in regard to financing of the company after the plant went into bankruptcy. These conversations ranged up until some time in July of this year. We were endeavoring to have the proposition financed and put the company on its feet. While these negotiations were pending I spent some money. I could not give the amount exactly. I paid the Washington Trust Company \$700, remitting it by telegraph. The date of the receipt is Mar. 1, 1912. I directed the application of the \$700. \$500 of that amount was to take up the interest which became due Sept. 1, 1911. That is, interest on the bonds. I directed that the balance be applied on the note which the Washington Steel & Bolt Company owed the Washington Trust Company. This was done with a view to preclude foreclosure at that time. I do not know whether Mr. Chavelle knew that this money had been sent. My impression is that I told him, but I do not remember. (The receipt given Mr. Gunn signed by the manager of the Western Union Telegraph Company for \$700 above mentioned was received in evidence and marked Exhibit No. 3.) (The letter from the Washington Trust Company to A. C. Gunn & Co. acknowledging receipt of the \$700 was received in evidence and is marked Exhibit No. 4.)

Q. What was your understanding regarding the interest on the bonds held by the Bank of Montreal.

A. My understanding of this transaction was that the interest on the notes which they held of the company was payable [202½] monthly, while their

(Deposition of A. C. Gunn.)

coupons that depended on that for the interest would come in every six months. For that reason I understood that the coupons were not sent in at the time that they became due, because they did not become due at the time of the payment of the interest. I sent the Bank of Montreal \$500. This was to go to the payment of interest on the notes. Mr. Hadley represented me in these transactions. He attended to most of the matter for me.

Cross-examination.

Mr. McPhaden is not employed by me or associated with me in business in any manner. My idea in paying the Bank of Montreal the \$500 was in order to stave off bringing proceedings until we could get negotiations for financing the plant. McPhaden officed with me. [203]

Deposition of E. S. Hadley.

November 20, 1912. In Seattle, Wn.

(Witness on behalf of Washington Trust Company.)

I am a practicing lawyer in this city. I have been practicing over ten years. I represented Mr. Gunn in his efforts to finance the bankrupt. I represented Mr. Gunn in a number of matters. Along in the spring sometime, cannot tell just when, Mr. Gunn talked of reorganizing this concern and getting it out of bankruptcy and getting it on its feet; and he had me see Mr. Chavelle with regard to what it would cost or how much money it would take to get a composition of the creditors and get the company

(Deposition of E. S. Hadley.)

out of the bankruptcy court. I saw Mr. Chavelle a number of times. I do not know how many. We agreed (that is, Mr. Chavelle and myself) that if we (Gunn and myself) could get \$2500, Mr. Chavelle could enter into a proposition with the creditors and get the creditors to compromise and our offer was to give the creditors this money or so much money, whatever portion that we should get in, and then give them notes of the company, or a note, a new bond issue as soon as the company was in position where the bonds could be raised and retire the old bonds, giving them new bonds of the company. Mr. Chavelle agreed to that and Mr. Gunn paid to me on Mar. 11, \$2500, and I told Mr. Chavelle as soon as I got it that I had the money. We also had several talks about how much the creditors were getting and what the fees would be for receiver and the expenses, etc. and it was understood how much that should be. Mr. Chavelle showed me some papers one day that he purported to have the names of all the creditors and he said that he represented practically all of them, and showed me what purported to be the composition. I suppose it was arranging the composition with the creditors that prevented the carrying through of the agreement. At least, that is what I thought it was, I was ready to put the deal through. I had the money to pay out. [204]

Cross-examination.

I think I told Mr. Chavelle, although I would not be sure about it, that Mr. Gunn had said that he had sent the Bank of Montreal some money. I think I

(Deposition of E. S. Hadley.)

told Mr. Chavelle that it was my understanding that the matter could be arranged with the Bank of Montreal. The \$2500 was paid back to Mr. Gunn by myself. Mr. Chavelle and I agreed that he was to receive either \$500 or \$600 for his services as trustee and the rest of it was to go to the creditors and Mr. Gunn was to take care of the preferred creditors, who were the men that had done labor up there and who had a preferred claim. He was to pay the taxes in addition. [205]

Exhibits of Washington Trust Company.

(NOTE: As there were several different hearings, some of the exhibits bear the same number.)

Exhibit 1. Depositions.

Exhibit 1. Bill of sale from Gallant to Chapin of one \$1,000 bond and other shares of stock.

Exhibit 2. Trust Deed or mortgage of Washington Steel & Bolt Co., to the Washington Trust Co., Trustee.

Exhibit 2, 3, 4, 5, and 6. Bonds of C. F. Chapin aggregating \$2,500 in amount.

Exhibit 3. Receipt of Western Union Telegraph Co. to A. C. Gunn for \$700, to be transmitted to The Washington Trust Co., dated March 1, 1912.

Exhibit 4. Letter from The Washington Trust Company to A. C. Gunn & Company acknowledging receipt of \$700, of which amount \$500, was to be applied in the interest on the interest on the bonds and the balance on the note of the Washington Steel & Bolt Company.

Exhibit 7. Check of Meta McElroy dated June 16,

1909, payable to A. McPhaden for \$1,500, endorsed by McPhaden.

Exhibit 8. Check of Meta McElroy, dated Sept. 26, 1908, payable to DeBogart for \$360, and endorsed by DeBogart.

Exhibit 9, 10, 11, 12, 13, 14 and 15. Bonds of Meta McElroy aggregating \$2,000, in amount.

Exhibit 16, 17, 18, 19 and 20. Bonds of the Bank of Montreal, aggregating \$47,900 in amount.

Exhibit 21. Request of the Bank of Montreal dated Feb. 19, 1912, to The Washington Trust Company to foreclose on the Trust Deed of Washington Steel & Bolt Company.

Exhibit 22. Promissory note signed by A. McPhaden and A. G. Pike, payable to Washington Steel & Bolt Company for sum of \$10,000, dated May 1, 1909, and endorsed by the [206] Washington Steel & Bolt Company.

Exhibit 23. Promissory note signed by A. McPhaden and A. G. Pike payable to Washington Steel & Bolt Company for the sum of \$5,000, dated May 11, 1909, and endorsed by Washington Steel & Bolt Company.

Exhibit 24. Promissory note signed by A. McPhaden and A. G. Pike payable to Washington Steel & Bolt Company for the sum of \$2,500, dated June 16, 1909, and endorsed by Washington Steel & Bolt Company.

Exhibit 25. Promissory note signed by A. McPhaden and A. G. Pike, payable to Washington Steel & Bolt Company for the sum of \$2,500, dated July 28, 1909, and endorsed by Washing-

ton Steel & Bolt Company.

Exhibit 26. Request of J. H. Osborne addressed to The Washington Trust Company dated Aug. 29, 1912, that the latter foreclose deed of trust of Washington Steel & Bolt Co.

Exhibit 27. Copy of minutes of meeting of trustees of Washington Steel & Bolt Co. held on Sept. 1, 1908, authorizing execution of trust deed and selling bonds and commission of 5% for selling, and discount in addition of 5% to McPhaden, and other matters.

Exhibit 28. Request of Washington Steel & Bolt Company to deliver to Pike bonds to amount of 2,693.85, allowing agents commission of 5% and discount of 5% dated Sept. 1, 1908, or 4 bonds of \$500 and 9 bonds of \$100, and stating that this would leave Pike a credit of \$63.23 on the books of Co.

Exhibit 29. Request of Washington Steel & Bolt Company to The Washington Trust Company to deliver McPhaden \$21,128.20 in bonds with same allowance as above or say 20 bonds \$1,000 each, 6 bonds of \$500 each and 3 bonds of \$100 each, dated Sept, 1, 1908, upon his paying \$58.32 in cash. [207]

Exhibit 30. Order from Washington Steel & Bolt Co. to The Washington Trust Co. to issue to McPhaden six \$500 bonds, seven \$100 bonds, total \$3,700 in bonds, dated Dec. 28, 1908.

Exhibit 31. Copy of special meeting of Trustees of Washington Steel & Bolt Company on Apr. 30, 1909, authorizing:

1. That Bank of Montreal be made depository for company's funds and that the banking be transferred to said bank.
2. The President and Treasurer to negotiate such loans from time to time as they deemed necessary to further the interests of the company.
3. Secretary to notify Washington Trust Company to deliver to McPhaden bonds to the amount of \$20,000, on presentation of McPhaden's note for that amount, less 5% of the face value of bonds and 5% commission.

Exhibit 32. Letter from Washington Steel & Bolt Company to McPhaden dated May 3, 1909, enclosing copy of minutes of Trustees' Meeting of Apr. 30, 1909, so that he might present same to Washington Trust Co.

Exhibit 33. Special meeting of Trustees of Washington Steel & Bolt Company of June 29, 1909, resolving:

1. That Washington Trust Co. pay bondholders the interest accrued on said bonds.
2. That Washington Trust Co. accept return of all or any of bonds issued to McPhaden under authority of Board of Trustees of Apr. 30, 1909, and return McPhaden's notes.

Exhibit 34. Letter dated Nov. 11, 1909, from Washington Steel & Bolt Company to Washington Trust Co., directing it to issue remaining \$1,500 of bonds in addition to \$4,500 of the bonds is-

sued pursuant to Exhibit 31 to McPhaden (two \$500 and five \$100) and also to return McPhaden's notes for \$4,050, held against said \$4,500 of bonds as McPhaden wishes [208] to cover his account with Washington Steel & Bolt Co. bonds.

Exhibit 35. Order from Washington Steel & Bolt Co. to Washington Trust Co., directing it to issue to McPhaden \$1,000 in bonds (one \$500 and five \$100) dated Feb. 19, 1910.

Exhibit 36. Letter from Washington Steel & Bolt Co. to The Washington Trust Company to effect that McPhaden's account showed credit of \$2,404.74 dated Feb. 19, 1910.

Exhibit 37. Minutes of Meeting of Board of Trustees of Washington Steel & Bolt Co. on Mar. 20, 1911, authorizing that \$25,000 of the company's unsold bonds be placed with the Bank of Montreal as collateral on a \$20,000 loan that the company owes, and an order be given the Washington Trust Co. to deliver the same to the Bank.

Exhibit 38. The order to the Washington Trust Co. in accordance with the above resolution and the Bank's receipt for the bonds.

Exhibit 39. Receipt of Bank to Washington Trust Company for \$25,000 bonds showing the par value of each bond.

Exhibit 40. Telegram from Washington Trust Co. to Washington Steel & Bolt Co., requesting a wire as to when remittance for interest on bonds would arrive.

Exhibits 40 to 47 inclusive. Bonds of Thomas S. Burley aggregating \$2,600 in amount.

Exhibit 48. Six interest bearing coupons of denomination of \$4 each, and two interest bearing coupons of \$40 each, of T. S. Burley.

Exhibit 49. Contract between Burley and McPhaden whereby the former acquired three \$1,000 bonds.

Exhibits 50, 51 and 52, bonds 410, 653 and 654 claimed to belong to J. H. Osborne, aggregating \$1,100 in amount. The remaining bonds, bonds 410 to 438, both inclusive, and [209] Nos. 655 to 660, both inclusive, were received in evidence under objection as part of the deposition of R. L. Webster, but were not marked with numbers as exhibits.

Exhibit 54. Delinquent Tax statement.

Exhibit 53. Certificate of commissioner of Public Lands re property of Washington Steel & Bolt Company.

Exhibit 55. Pencil Tracing of Lots.

Exhibits 56 and 57. Cash Book and Journal of Washington Steel & Bolt Company.

Trustee's Exhibits.

Exhibits "A," "B," "C," "D," "E," "F," and "G"—Letters from A. McPhaden to A. G. Pike.
[210]

[Order Approving Statement of Evidence, etc.]

The foregoing is a true and complete statement of the evidence taken before the referee herein, including a statement of the contents of petitioner's ex-

hibits, in so far as it is essential to the questions presented by the appeals of both the Trustee in Bankruptcy, and The Washington Trust Company, both appellants having agreed to submit their respective appeals on the foregoing statement of the evidence, and contains all of said evidence and exhibits essential to the decision of said questions and the same is hereby approved.

Dated this 23d day of November, 1914.

JEREMIAH NETERER,

Judge.

[Indorsed]: Statement of the Evidence of Both Appellants. Filed in the United States District Court, Western District of Washington. Nov. 23, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy.
[211]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

**Order [Directing Transmission of Original Exhibits
to Appellate Court].**

The praecipe for transcript on appeal, filed in the above-entitled matter, having called for the following exhibits to be sent to the United States Circuit Court of Appeals, the Clerk of this court is hereby authorized and directed to send up the original ex-

hibits now on file in this court, which exhibits are as follows, to wit:

Exhibit No. 2, being the deed of trust or mortgage executed in favor of the Washington Trust Company by the Washington Steel & Bolt Company.

Exhibits Nos. 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 presented in evidence by The Washington Trust Company.

And also bonds Nos. 702, 661 and 291 of the Washington Steel & Bolt Company presented in evidence by the Washington Trust Company.

And Exhibits "A," "B," "C" and "G," presented by the Trustee in Bankruptcy.

Dated this 18th day of December, 1914.

JEREMIAH NETERER,

Judge.

O. K.—Russell.

[Endorsed]: Order. Filed in the United States District Court, Western District of Washington. Dec. 18, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [212]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Order Enlarging Time to Make Return [to Citations Thirty Days from October 26, 1914].

For good cause shown, the time for making return on each of the two citations on the two appeals, filed by the parties in this case, and signed by the Judge of this court on October 26th, 1914, is hereby enlarged to thirty days from this date.

WITNESS the Honorable Edward D. White, Chief Justice of the United States, this 23d day of November, 1914.

JEREMIAH NETERER,
United States District Judge for the said District
and Division.

[Endorsed]: Order Enlarging Time to Make Return. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 23, 1914. [213]

*In the District Court of the United States in and for
the Western District of Washington, Northern
Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt.

Order Enlarging Time to Make Return [on Citations to January 9, 1915, etc.].

For good cause shown, the time for making return on each of the two citations on the two appeals, filed by the parties in this case, and signed by the Judge

of this court on October 26, 1914, is hereby enlarged to January 9, 1915.

The Clerk of this court is hereby directed to forward this order together with the order of this Court signed on November 23, 1914, enlarging the time to make return, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 18th day of December, 1914.

JEREMIAH NETERER,

United States District Judge for the Said District and Division.

O. K.—Russell.

[Endorsed]: Order Enlarging Time to Make Return. Filed in the United States District Court, Western District of Washington. Dec. 18, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.
[214]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

Citation on Appeal [of Trustee (Copy)].

United States of America,
Western District of Washington,
Northern Division,—ss.

The President of the United States, to The Washington Trust Company, and to James B. Murphy, Its Attorney:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date of the signing of this citation, pursuant to an appeal filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein Edward H. Chavelle, as trustee of the above-named bankrupt, is appellant and you are appellee, and to show cause, if any there be, why so much of the final order and judgment in said appeal mentioned should not be corrected and reversed and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 26th day of October, 1914.

[Seal]

JEREMIAH NETERER,

United States District Judge for the Said District and Division.

Attest: Frank L. Crosby, Clerk. By S. E. Leitch, Deputy Clerk.

I hereby accept due and legal service of the foregoing citation this 26th day of October, 1914.

JAMES B. MURPHY,
Attorney for Petitioner, The Washington Trust Company. [215]

[Endorsed]: No. 4717. In the District Court of the United States for the Western District of Washington, Northern Division. In the Matter of Washington Steel & Bolt Company, a Corporation, Bankrupt. Citation on Appeal. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. Service of papers, except process, in this case may be made upon J. W. Russell, Attorney for Trustee in Bankruptcy, 714 Lowman Building. Phones Main 1282. Independent 502. Seattle, Washington. [216]

[Praecipe of Trustee for transcript of Record.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt.

PRAECIPE FOR TRANSCRIPT.

To the Clerk:—

You will please prepare, duly authenticate, and send to the United States Circuit Court of Appeals for the Ninth Circuit, a Transcript herein, consist-

ing of the following portions of the record herein:—

Petition for appeal, and order allowing same.

Assignment of errors.

Citation on appeal.

Praecipe.

The adjudication.

Order appointing receiver.

Order appointing trustee.

Petition of The Washington Trust Company for leave to foreclose.

Amended answer to the trustee.

Report of Referee (July 20, 1914).

Order of Referee (July 20, 1914).

Petition for review of report and order of July 20, 1914.

Opinion of Judge Neterer filed September 15, 1914.

Order reviewing report and order of July 20, 1914.

Statement of evidence.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

I hereby accept due and timely service of the foregoing Praecipe for Transcript this 26th day of October, 1914.

JAMES B. MURPHY,

Attorney for Petitioner, The Washington Trust Company. [217]

I waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

J. W. RUSSELL,

Attorney for Trustee in Bankruptcy.

[Endorsed]: Praeceptum for Transcript. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [218]

In the United States District Court for the Western District of Washington, Northern Division.

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT COMPANY, a Corporation,

Bankrupt.

Citation [on Appeal of Washington Trust Co. (Copy)].

United States of America,

Western District of Washington.

The President of the United States, to the Washington Steel & Bolt Company, the Above Bankrupt and to Edward H. Chavelle, Trustee in Bankruptcy of the Said Washington Steel & Bolt Company, Greeting:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein the Washington Trust Company, the petitioner for leave to foreclose its mortgage, is ap-

pellant, and you are appellees, to show cause, if any there be, why the judgments in said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

WITNESS the Honorable Edward D. White, Chief Justice of the United States Supreme Court, this 26 day of October, 1914.

JEREMIAH NETERER,
United States District Court Judge, Presiding Over
the Above-entitled Court.

[Seal] Attest: FRANK S. CROSBY,
Clerk.

By S. E. Leitch,
Deputy. [219]

Due service of the within Citation acknowledged, and a true copy received this 26th day of Oct., 1914.

J. W. RUSSELL,
Attorney for Trustee in Bankruptcy.

[Endorsed]: Citation. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [220]

**[Praeipie of Washington Trust Co. for Transcript
on Appeal.]**

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt,

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To the Clerk of the Above-entitled Court:

Will you kindly prepare, duly authenticated, and send to the United States Circuit Court of Appeals, Ninth Circuit, a transcript of the record herein containing the following items, making one record of the items contained in this praecipe and the items filed on behalf of the Trustee in Bankruptcy on the 26th day of October, 1914.

Memorandum decision filed by the Referee in Bankruptcy on November 26, 1912.

Order entered by the Referee on December 19, 1912, passing upon the petition of the Washington Trust Company.

Petition for Review filed with the Referee on December 28, 1912.

Memorandum decision of the Judge of the District Court filed herein February 7, 1913.

Order of the District Court referring this case back to the Referee filed March 3, 1913.

Reply of the Washington Trust Company filed herein on April 25, 1913.

Memorandum decision of the Referee filed herein on May 15, 1913.

Order of the Referee denying the petition of the Washington Trust Company filed June 16, 1913.

Petition of the Washington Trust Company for review filed with the Referee on June 20, 1913.

Memorandum decision of the District Court filed herein on September 22, 1913. [221]

Order of the District Court reversing the order of Referee filed herein on November 14, 1913.

Petition of the Trustee in Bankruptcy to sell the property of the bankrupt filed herein December 10, 1913.

Answer of the Washington Trust Company to the petition to sell filed with the Referee April 13, 1914.

Exceptions of the Washington Trust Company to the order of the Referee, which exceptions were also filed on July 20, 1914.

Exceptions to the order disallowing the claim filed herein on July 21, 1914.

Order of the Referee directing a sale of the property filed herein on July 28, 1914.

Stipulation that all testimony taken at previous hearings might be considered filed herein July 30, 1914.

Petition for review of the order directing a sale of the property which was filed herein July 31, 1914.

Exceptions of the Washington Trust Company to the order entered by the District Judge October 16, 1914, which exceptions were also filed on October 16, 1914.

Proposed provisions of an order presented for signing, together with the refusal to sign the same, which proposal was filed October 16, 1914.

Order of the District Judge confirming order directing the sale of the property, which order was entered by the District Judge on October 16, 1914.

Exceptions of the Washington Trust Company to said order filed herein on same date.

Petition for appeal filed herein by the Washington Trust Company and the order allowing the same.

The assignments of error filed by the Washington

Trust Company in support of its appeal.

Bond filed by the Washington Trust Company in support of its appeal, together with the Judge's approval thereof.

The petition of the Washington Trust Company for supervision and revision by the Circuit Court of Appeals of orders, judgments and proceedings mentioned in said petition. [222]

The citation issued on the appeal of the Washington Trust Company, together with the admission of service thereon.

Order of Nov. 23, enlarging time within which to make return.

This Praeceptum.

Order of District Court dated Oct. 26, 1914, extending time to file praecipe for record on appeal and narrative statement of evidence.

Order of Nov. 2, 1914, extending time to file praecipe and statement of evidence.

All the exhibits of the Washington Trust Company which purport to be Deed of Trust, Minutes, or copies of Minutes, passed by the Board of Trustees of the Washington Steel & Bolt Company, and orders or requests of Washington Steel & Bolt Company made on the Washington Trust Co. in regard to the bonds, which exhibits are designated as follows:

Exhibit No. 2 Deed of Trust or Mortgage in favor of Washington Trust Co.

Exhibit 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39.

Order of Nov. 5, 1914, extending time for filing praecipe and statement.

Order of Nov. 10, 1914, extending time for filing praecipe and narrative statement of evidence to Nov. 16, 1914.

Order of Nov. 16, 1914, extending time for filing praecipe and narrative statement of evidence to Nov. 23, 1914.

Bond No. 702 of the Washington Steel & Bolt Co.

JAMES B. MURPHY,

Attorney for Washington Trust Company,

I hereby acknowledge due, regular and timely service of the foregoing praecipe for transcript this 23d day of November, 1914.

J. W. RUSSEL,

Attorney for Trustee in Bankruptcy.

I waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

JAMES B. MURPHY,

[Endorsed]: Praecipe for Transcript on Appeal. Filed in the United States District Court, Western District of Washington. Nov. 23, 1914. Frank L. Crosby, Clerk. By B. E. S. Deputy. [223]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt,

Clerk's Certificate to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, FRANK L. CROSBY, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 227 typewritten pages numbered from 1 to 227 inclusive, to be a full, true, correct and complete copy of so much of the record and proceedings in the above and foregoing entitled cause as is called for by the Praeceptum of the Attorneys for the Appellants and Appellees, as the same remain of record and on file in the office of the Clerk of the said Court, and that the same constitute the transcript of record on appeal from the District Court of the United States for the Western District of Washington to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on be-

half of the Appellants for making typewritten transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause to wit: [224]

Clerk's fee (Sec. 828 R. S. U. S. for making typewritten transcript of record—532 folios at 15¢.....	\$79.80
Certificate of Clerk to Transcript of record—3 folios at 15¢.....	.45
Seal to said Certificate.....	.20
Certificate of Clerk to Original Exhibits—2 folios at 15¢.....	.30
Seal to said Certificate.....	.20
	<hr/>
	\$80.95

I hereby certify that the above cost for preparing and certifying record amounting to \$80.95 has been paid to me by James B. Murphy, Esquire, (\$58.80) and J. W. Russel, Esquire, (\$22.15) Attorneys for Appellants.

I further certify that I hereto attach and herewith transmit the original Citations issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 2d day of January, 1915.

[Seal]

FRANK L. CROSBY,
Clerk. [225]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,

Bankrupt,

Citation on Appeal [of Trustee (Original)].

United States of America,
Western District of Washington,
Northern Division,—ss.

The President of the United States, to the Washington Trust Company, and to James B. Murphy, its attorney:—

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date of the signing of this citation, pursuant to an appeal filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein Edward H. Chavelle, as trustee of the above-named bankrupt, is appellant and you are appellee, and to show cause, if any there be, why so much of the final order and judgment in said appeal mentioned should not be corrected and reversed and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward D. White, Chief

Justice of the United States, this 26th day of October, 1914.

[Seal] JEREMIAH NETERER,
United States District Judge for said District and
Division.

Attest:

FRANK L. CROSBY,
Clerk.

By S. E. Leitch,
Deputy Clerk.

I hereby accept due and legal service of the foregoing citation this 26th day of October, 1914.

JAMES B. MURPHY,
Attorney for Petitioner, The Washington Trust
Company. [226]

[Endorsed]: No. 4717. In the District Court of the United States for the Western District of Washington, Northern Division. In the Matter of Washington Steel & Bolt Company, a Corporation, Bankrupt. Citation on Appeal. Filed in the United States District Court, Western District of Washington. Oct. 26, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4717.

In the Matter of WASHINGTON STEEL & BOLT
COMPANY, a Corporation,
Bankrupt,

**Citation [on Appeal of Washington Trust Co.
(Original)].**

United States of America,
Western District of Washington,—ss.

The President of the United States, to the Washington Steel & Bolt Company, the Above Bankrupt and to Edward H. Chavelle, Trustee in Bankruptcy of the said Washington Steel & Bolt Company, Greeting:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within thirty (30) days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein the Washington Trust Company, the petitioner for leave to foreclose its mortgage, is appellant, and you are appellees, to show cause, if any there be, why the judgments in said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

WITNESS the Honorable Edward D. White,
Chief Justice of the United States Supreme Court

this 26 day of October, 1914.

[Seal] JEREMIAH NETERER,
United States District Court Judge Presiding over
the above-entitled court.

ATTEST:

FRANK L. CROSBY,
Clerk.

By S. E. Leitch,
Deputy. [227]

Due service of the within citation acknowledged
and a true copy received this 26 day of Oct. 1914.

J. W. RUSSELL,
Attorneys for Trustee in Bankruptcy.

[Endorsed]: No. 4717. In the United States
District Court for the Western District of Wash-
ington, Northern Division. In the Matter of
Washington Steel & Bolt Co., a Corporation, Bank-
rupt. Citation. Filed in the United States Dis-
trict Court, Western District of Washington. Oct.
26, 1914. Frank L. Crosby, Clerk. By B. E. S.,
Deputy.

[Endorsed]: No. 2512. United States Circuit
Court of Appeals for the Ninth Circuit. Edward
H. Chavelle, as Trustee in Bankruptcy of Washing-
ton Steel & Bolt Company, a Corporation, Bank-
rupt, Appellant, vs. Washington Trust Company, a
Corporation, Appellee, and Washington Trust Com-
pany, a Corporation, Appellant, vs. Washington
Steel & Bolt Company, a Corporation, Bankrupt
and Edward H. Chavelle, as Trustee in Bankruptcy
of Washington Steel & Bolt Company, a Corpora-

tion, Bankrupt, Appellees. In the Matter of Washington Steel & Bolt Company, a Corporation, Bankrupt. Transcript of Record. Upon Appeals from the United States District Court for the Western District of Washington, Northern Division.

Filed January 4, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

This is **Trusting Certificate** that this bond is one of a series of bonds described in the
 or deed of trust therein mentioned, executed by the **Washington Steel & Bolt**
 undersigned as **Trustee**, bearing date the first day of September, A. D. 1906

THE WASHINGTON TRUST COMPANY

By *Richard L. Washington*

July 12, 1911 Registered in the name of the Bank of Montreal.

The Washington Trust Company

By *R. L. Washington*

Referring Exhibit 16
Door 12 ca 4

**WASHINGTON
 STEEL & BOLT
 COMPANY.**

OF EDMONDS, WASH.

**3 PERCENT
 TEN YEAR
 FIRST MORTGAGE.**

GOLD BOND

16



Principal Due, Sept. 1st 1918
 Interest Payable March 1st & Sept. 1st
 PRINCIPAL AND INTEREST PAYABLE AT
 THE WASHINGTON TRUST COMPANY
 SPOKANE, WASH.

Case No. 2512

U. S. Circuit Court of Appeals
 For the Ninth Circuit

Petitioner Exhibit 16
 Received June 5, 1918
 P. D. MONTGOMERY, Clerk

United States of America
State of Washington

Washington Steel & Bolt Company

EDMONDS, WASHINGTON.

FIRST MORTGAGE EIGHT PER CENT GOLD BOND.

Know all Men by These Presents: That WASHINGTON STEEL & BOLT COMPANY, a corporation duly organized and existing under the laws of the State of Washington, for value received, acknowledges itself indebted to the bearer of this bond, or if this bond be registered to the registered holder thereof in the sum of One Thousand (\$1000) Dollars (or Five Hundred (\$500) Dollars or One Hundred (\$100) Dollars as the case may be) which it hereby promises and agrees to pay in United States gold coin of the present standard of weight and fineness, on the first day of September, 1918, at the office of The Washington Trust Company, Trustee, in the City of Spokane, County of Spokane, State of Washington, with interest thereon from the date of issue or sale thereof until paid, at the rate of eight (8%) per centum per annum payable semi-annually in like gold coin on the first day of March and September in each year on the presentation and surrender of the coupons annexed hereto, as they severally become due; all payments upon this bond, both of the principal and interest shall be made without deduction for any tax or taxes that said Washington Steel & Bolt Company may be required to pay or to retain therefrom by any present or future laws of the United States of America, or of the State of Washington, said Washington Steel & Bolt Company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is one of a series of Seven Hundred and Fifty (750) bonds, all of the same tenor and date, numbered consecutively from one (1) to and including the number Seven Hundred and Fifty (750). The first Five Hundred (500) bonds being of the denomination of One Hundred (\$100) Dollars each and Two Hundred (200) bonds being of the denomination of Five Hundred (\$500) Dollars each and Fifty (50) bonds being of the denomination of One Thousand (\$1000) Dollars each, and all said bonds with the coupons thereto attached, are equally secured by a first mortgage or deed of trust, duly executed and delivered by the said Washington Steel & Bolt Company to The Washington Trust Company in Spokane, County of Spokane, State of Washington, as Trustee, subject to all the provisions and conditions therein, bearing even date with this bond, authorized by said WASHINGTON STEEL & BOLT COMPANY to be issued to an amount not exceeding in the aggregate the principal sum of Two Hundred Thousand (\$200,000) Dollars, nevertheless, with the understanding that Seventy-Five Thousand (\$75,000) Dollars of said bonds shall be issued and placed on the market on the execution and delivery of this said Indenture, and the balance of One Hundred and Twenty-Five Thousand (\$125,000) Dollars of said bonds to be held by the Trustee, and not issued and put on the market only in the event and at such time in the future as the Trustees of said Washington Steel & Bolt Company may deem to be for the best interests of said company, and covering and conveying all real property and personal property owned by said WASHINGTON STEEL & BOLT COMPANY, and more particularly described in said mortgage, and to which reference is hereby made for the nature and extent of the security and the rights of the holders of these bonds, and the terms and conditions thereof, which is duly recorded in the office of the County Auditor of Snohomish County, State of Washington; in case default shall be made and shall continue for six (6) months in the payment of any interest on any of the bonds secured by this Indenture, the principal of the said bonds with all the interest accrued and unpaid thereon, shall become due and payable at the election and upon declaration of the owners of one-third in amount of said bonds, then outstanding.

This bond may pass by delivery but may be registered as to the number thereof, upon the transfer book of the Trustee at its office, and after such registration duly certified hereon by the Trustee this bond shall be transferred only on said books, unless transfer be to bearer, when it shall again be transferred by delivery subsequent to registration in like manner. This bond shall not become obligatory until it shall have become authenticated by the certificate of the Trustee endorsed hereon.

No recourse shall be had for the payment of the principal or interest of this bond, against any individual incorporator, stockholder, officer or trustee of said Washington Steel & Bolt Company, and any and all liabilities of incorporators, stockholders, trustees and officers of the said Washington Steel & Bolt Company individually being hereby released.

In Witness Whereof, the said WASHINGTON STEEL & BOLT COMPANY has caused these presents to be signed and executed in its corporate name by its President, and counter-signed by its Secretary, and its corporate seal hereto affixed, and the coupons for interest being authenticated by the engraved signature of its Treasurer to be attached hereto, this Twentieth day of September, 1908, all pursuant to legal authority in them vested to that end.

WASHINGTON STEEL & BOLT COMPANY,

President.

ATTEST:

Secretary.

Coupon No 10

WASHINGTON STEEL & BOLT COMPANY.

SOMONOS WASH

ON THE FIRST DAY OF SEPTEMBER 1913
WASHINGTON TRUST COMPANY IN THE CITY OF SPokane
OF WASHINGTON FORTY DOLLARS
UNITED STATES OF AMERICA BEING BK 10 MONTHS INTEREST
FIRST MORTGAGE GOLD BOND

43 18/10

\$ 40.00 | XXXX COUPON No 9 | XXXX \$ 40.00
WASHINGTON STEEL & BOLT COMPANY.
 SPOKANE, WASH.
 REP. ON THE FIRST DAY OF MARCH, 1913
WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE
 STATE OF WASHINGTON, **FORTY DOLLARS**
 U. S. STATES OF AMERICA BEING SIX (6) MONTHS INTEREST
 FIRST MORTGAGE GOLD BOND
U.S. 1st
 MAY 1913

\$ 40.00 | XXXX COUPON No 8 | XXXX \$ 40.00
WASHINGTON STEEL & BOLT COMPANY.
 EDMONDS WASH
 TO THE BEARER ON THE FIRST DAY OF SEPTEMBER 1912
 OF THE WASHINGTON TRUST COMPANY IN THE CITY OF SEATTLE
 OF THE STATE OF WASHINGTON **FORTY DOLLARS**
 OF THE UNITED STATES OF AMERICA, BEING SIX (6) MONTHS INTEREST
 ON ITS FIRST MORTGAGE BOND

45 120

\$ 40.00 (XXXX COUPON NO 7 XXXX) \$ 40.00
WASHINGTON STEEL & BOLT COMPANY.
 EDMONDS WASH
 TO THE BEARER ON THE FIRST DAY OF **MARCH 1912**
 OF THE **WASHINGTON TRUST COMPANY** IN THE CITY OF **SPokane**
 SPOKANE, STATE OF WASHINGTON **FORTY DOLLARS**
 OF THE UNITED STATES OF AMERICA. BEING SIX (6) MONTHS INTEREST
 ON THAT OF ITS FIRST MORTGAGE GOLD BOND
 702 113 130

\$40.00 (XXX) COUPON NO 6 (XXX) \$40.00
WASHINGTON STEEL & BOLT COMPANY.
 COMMONS WASH
 PAY TO THE BEARER ON THE FIRST DAY OF SEPTEMBER, 1911
 OFF CO OF THE WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE
 OF SPOKANE, STATE OF WASHINGTON **FORTY DOLLARS**
 COIN OF THE UNITED STATES OF AMERICA, BEING SIX (6) MONTHS INTEREST
 THAT DATE OF ITS FIRST MORTGAGE GOLD BOND
 702 *65 1/2*

\$ 40⁰⁰ (XXXX COUPON NO 5 XXXX) \$ 40⁰⁰
WASHINGTON STEEL & BOLT COMPANY.
 COMMONS WASH
 BEARER ON THE FIRST DAY OF MARCH, 1911
 WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE
 STATE OF WASHINGTON FORTY DOLLARS
 UNITED STATES OF AMERICA, BEING SIX (6) MONTHS INTEREST
 & PAY MORTGAGE GOLD BOND
 W. S. B. 11
 REC.

\$ 40.00 (XXX COUPON No 4 XXX) \$ 40.00
WASHINGTON STEEL & BOLT COMPANY.
 EDMONDS WASH
 BEARING ON THE FIRST DAY OF SEPTEMBER, 1910
 WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE
 STATE OF WASHINGTON. FORTY DOLLARS
 UNITED STATES OF AMERICA. BEING SIX (6) MONTHS INTEREST
 DUE ON ITS FIRST MORTGAGE GOLD BOND
 702 *U.S. Bldg.*

\$ 40.00 (XXXX) COUPON NO 3 (XXXX) \$ 40.00
WASHINGTON STEEL & BOLT COMPANY.
 COMMONS WASH
 BEARER ON THE FIRST DAY OF **MARCH, 1910**
WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE
 STATE OF WASHINGTON **FORTY DOLLARS**
 UNITED STATES OF AMERICA BEING SIX (6) MONTHS INTEREST
 ITS FIRST MORTGAGE GOLD BOND *U B LK*

\$ 40⁰⁰ (XXXX COUPON NO 12 XXXX) \$ 40⁰⁰
WASHINGTON STEEL & BOLT COMPANY.
 40 MONDS. WASH
 ON THE FIRST DAY OF SEPTEMBER, 1914
 WASHINGTON TRUST COMPANY IN THE CITY OF SPOKANE,
 & OF WASHINGTON. **FORTY DOLLARS**
 THE UNITED STATES OF AMERICA, BEING SIX (6) MONTHS INTEREST
 FIRST MORTGAGE GOLD BOND.

\$40.00 (XXXX COUPON No. 11 XXXX) \$40.00
WASHINGTON STEEL & BOLT COMPANY.
 EDMONDS, WASH.
 ON THE FIRST DAY OF MARCH, 1914
 TRUST COMPANY IN THE CITY OF BOSTON,
 OF THE SUM OF **FORTY DOLLARS.**
 ITS PAY TO THE ORDER OF AMERICA, BEING SIX (6) MONTHS INTEREST
 LD BOND. *U.S. Bank*
 FIRST-CLASS



**[Petitioner's Exhibit No. 27—Minutes of Meeting of
Directors of Washington Steel & Bolt Co., Dated
September 1, 1908.]**

Edmonds, Washington, Sept. 1, 1908.

Pursuant to notice duly given, a meeting of the directors of the Washington Steel & Bolt Company was held at the office of the company at Edmonds, Washington, on said first day of September, 1908. The meeting was called to order by the president, A. McPhaden and roll call being taken it was found that the following Trustees were present. A. McPhaden, A. G. Pike, A. M. Yost and

The minutes of the previous meeting were read and on motion of A. M. Yost, duly seconded, the same were adopted and approved unanimously.

On motion of A. G. Pike, seconded by A. M. Yost, duly carried, the following resolutions were unanimously adopted, to-wit:

Be it now resolved, that whereas, at a meeting of the Trustees of the Washington Steel & Bolt Company held on the 13th day of June, 1908, at its office in Edmonds, Washington, did then and there by the power and authority in them vested by its articles of incorporation and by-laws, and the laws of the State of Washington resolved, authorized and determined to make and issue its first mortgage eight per cent gold bonds to an amount not exceeding \$200,000.00 and to secure the due payment of the principal and interest thereon, by executing and delivering to a suitable trustee a first mortgage or deed of trust upon the entire property and privileges of

said Washington Steel & Bolt Company. Seventy-five thousand (\$75,000.00) Dollars of said bonds to be issued and placed on the market on the execution and delivery *fo* said mortgage and \$125,000 of said bonds to be issued and put on the market only in the event and at such time in the future as the Trustees *maydeem* to be for the best interests of said company. Now, therefore, in pursuance of said resolutions, acts and proceedings at said meeting as aforesaid, it is now hereby further resolved that said bonds be issued in all respects as in said resolutions and proceedings set out, and The Washington Trust Company of Spokane, be and it is hereby selected, nominated and appointed Trustee of said Washington Steel & Bolt Company as by said resolutions contemplated, and the President and Secretary of the Board of Trustees of said Washington Steel & Bolt Company be and they are hereby directed and required to execute and deliver to said The Washington Trust Company as Trustee, a first mortgage or deed of trust upon all and entire the property and privileges of said Washington Steel & Bolt Company for the uses and purposes set forth in said resolutions and said mortgage or deed or trust.

On motion of A. M. Yost, seconded by A. G. Pike, and duly carried, the Washington Steel and Bolt Company withdraws from the market 400,000 shares of its unsold treasury stock, until such time in the future as the company may see fit and proper to issue and place the same on the market.

On motion of A. M. Yost, seconded by A. G. Pike, and duly carried, a commission of five per cent of the

face value of the bonds of said company be allowed to any agent, officer or Trustee of the company purchasing or selling any of said bonds of said company. The company to furnish all literature, such as prospectuses, etc.

On motion of A. G. Pike, seconded by A. M. Yost, duly carried, the bill of The Washington Trust Company of Four Hundred and Seventy-five (\$475.00) Dollars for its services in acting as Trustee for said Washington Steel & Bolt Company in the registering and all other work of every nature or kind performed or to be performed by said Trustee, connected with said bonds, which said bill also includes all charges made by its attorney in the examining and passing upon said mortgage or trust deed.

On motion of A. M. Yost, seconded by A. G. Pike duly carried, the accounts of A. McPhaden and A. G. Pike for money loaned to the Washington Steel & Bolt Company to date be settled by giving them bonds of the Washington Steel & Bolt Company, allowing them a discount of five per cent on said bonds, and a commission of five per cent for selling the same and authorizing the Trustee to issue to them bonds of said company in proportion to the amount of the claims due each, as shown by the books of the company.

John Barkely having at this time, in writing, tendered his resignation as Vice-president of the Company, same being accepted, Wales R. Ammon was on motion duly made and carried, elected Vice-President of the company in place of and stead of said Barkely resigned.

There being no further business to come before the meeting, said meeting on motion duly made and carried was adjourned.

A. M. McPHADEN,
President.

Attest: A. G. PIKE,
Secretary.

This Is To Certify, that we, Alexander McPhaden, A. G. Pike, A. M. Yost and ————— of the undersigned trustees hereby state that we were present at the Trustees meeting of the Washington Steel & Bolt Company held Sept. 1, 1908 at its office in Edmonds, Washington, and took part in all the proceedings; that the above minutes of said meeting fully set forth the proceedings of said meeting, all of which we hereby approve of.

We, J. W. Cosford and Austin Ready hereby certify that we have carefully read the minutes of the Trustees meeting of the Washington Steel and Bolt Company held on the first day of September, 1908, as hereinabove set forth, and hereby fully approve of the same.

W. R. AMMON, Vice President,
A. G. PIKE, Sec. and Treas.

Subscribed and sworn before me this 7th day of December, A. D. 1908.

[Seal] TOPHAR HOWELL,
Notary Public in and for the State of Washington,
Residing at Edmonds.

[Endorsed]: "Petitioner's Exhibit 27." Dora Beach. No. 2512. U. S. Circuit Court of Appeals

for the Ninth Circuit. Petitioner's Exhibit 27. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 28—Certificate of Secretary and Treasurer of Washington Steel & Bolt Co. Re Account of A. G. Pike.]

WASHINGTON STEEL & BOLT CO.

EDMONDS, WASH., —————.

To The Washington Trust Co.;—

This is to certify, that according to the books of the Washington Steel & Bolt Co., A. G. Pike, up to the first day of September, 1908, has a credit of \$2,693.85, and that according to a resolution passed by the Trustees of the said Washington Steel & Bolt Co., on the first day of September, 1908, said A. G. Pike is to be paid in the bonds of said company, allowing the agent's commission of five per cent, and the discount of five per cent; which said discount and commission would give him a credit of \$2,963.23, and you are authorized and instructed to issue to said A. G. Pike four (4) bonds of the denomination of \$500.00 each, and nine (9) bonds of \$100.00 each, making a total cash value of \$2,900.00, and leaving him a credit balance of \$63.23 on the books of said company.

Dated this first day of September, 1908.

WASHINGTON STEEL & BOLT CO.

(Signed) By A. S. PIKE,

Secretary and Treasurer.

(Signed) H. R. BEESON,

Accountant.

[Endorsed]: "Petitioner's Exhibit 28." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 28. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 29—Certificate of Secretary and Treasurer of Washington Steel & Bolt Co. Re Account of A. McPhaden, Up to September 1, 1908.]

WASHINGTON STEEL & BOLT COMPANY.

EDMONDS, WASH., —————

To The Washington Trust Company:

This is to certify, that according to the books of the Washington Steel & Bolt Company, A. McPhaden up to the first day of September, 1908 has a credit of \$21,128.80, and that according to a resolution passed by the trustees of the said Washington Steel & Bolt Company on the first day of September, 1908, said A. McPhaden is to be paid in the bonds of said company, allowing the agent's commission of five per cent, and the discount of five per cent; which said discount and commission would give him a credit of \$23,241.68, and on payment to you of \$58.32 in cash, you are authorized and instructed to issue to said A. McPhaden 20 bonds of denomination of \$1,000 each, six bonds of \$500. each, and 3 bonds of \$100 each, making a total cash value of \$23,300.

Dated this first day of September, 1908.

WASHINGTON STEEL & BOLT COMPANY.

(Signed) By A. G. PIKE,
Secretary and treasurer.

[Endorsed]: "Petitioner's Exhibit 29." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 29. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 30—Certificate of Treasurer and Manager of Washington Steel & Bolt Co. Re Account of A. McPhaden, Up to December 28, 1908.]

WASHINGTON STEEL & BOLT CO.

EDMONDS, WASH., Dec. 28, 1908.

To The Washington Trust Co.;—

This is to certify, that according to the books of the Washington Steel & Bolt Co., A. McPhaden, up to the Twenty-eighth day of December, 1908, has a credit of \$3,707.18, and that according to a resolution passed by the Trustees of the said Washington Steel & Bolt Co., on the first day of September, 1908, said A. McPhaden is to be paid in the bonds of said company; and you are authorized and instructed to issue to said A. McPhaden six (6) bonds of the denomination of \$500.00 each, and seven (7) bonds of \$100.00 each, making a total cash value of \$3,700.00.

Dated this twenty-eighth day of December, 1908.
THE WASHINGTON STEEL AND BOLT CO.,

(Signed) By A. G. PIKE,
Treasurer & Mgr.,
(Signed) H. R. BEESON,
Sec'y.

[Endorsed]: "Petitioner's Exhibit 30." Dora Beach. No. 2512. U. S. Circuit Court of Appeals

for the Ninth Circuit. Petitioner's Exhibit 30. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 31—Minutes of Meeting of Trustees of Washington Steel & Bolt Co., April 30, 1909.]

Edmonds, Wn.,

April 30th, 1909.

Pursuant to notice given by the Secretary, a special meeting of the Trustees of the Washington Steel & Bolt Company was held at the office of the Company at Edmonds, Wash., on the thirtieth day of April, 1909. The meeting was called to order by the President A. McPhaden, and roll call being taken, it was found that the following Trustees were present; A. McPhaden, A. G. Pike, W. R. Ammon, H. W. Hall, and H. R. Beeson.

The minutes of the previous meeting were read and on motion of H. W. Hall, duly seconded, the same were approved and adopted.

On motion of A. G. Pike, seconded by W. R. Ammon, and duly carried, it was decided that the Bank of Montreal be made a depository for the Company's funds and that all banking business be transferred from the State Bank of Edmonds to said Bank of Montreal.

On motion of A. G. Pike, seconded by W. R. Ammon, and duly carried, the President and Treasurer were authorized to negotiate loans from time to time as they deemed necessary to further the interests of the Company.

On motion of A. G. Pike, seconded by W. R. Ammon, and duly carried, the Secretary was in-

structed to notify the Washington Trust Company to deliver to A. McPhaden, bonds of the Washington Steel & Bolt Company to the amount of \$20,000.00 or any part thereof, upon presentation of said A. McPhaden's note to the amount of the bonds delivered, less five per cent of the face value of the bonds and five per cent commission; said note to draw eight per cent interest, payable on date when interest on Bonds fall due.

There being no further business to come before the meeting, said meeting, on motion duly *amde* and carried, was adjourned.

(Signed) A. McPHADEN,
Pres.

(Signed) W. R. AMMON,
Vice-Pres.

(Signed) A. G. PIKE,
Mgr. & Treas.

(Signed) H. R. BEESON,
Sec'y.

(Signed) H. W. HALL,
Trustee.

[Endorsed]: "Petitioner's Exhibit 31." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 31. Received Jan. 5, 1915. F. D. Monckton, Clerk.

**[Petitioner's Exhibit No. 32—Letter, May 3, 1909,
Washington Steel and Bolt Co. to A. McPhaden.]**

WASHINGTON STEEL & BOLT CO.

EDMONDS, WASH., May 3, 1909.

Mr. A. McPhaden

Spokane, Wn.

Dear Sir;—

In reply to your favor of the first, you will please find enclosed copy of minutes of Director's meeting held April 30, 1909. In the past Washington Trust Co. has required minutes properly signed which authorized any action on their part and we take this means of getting quick action on your deal. I don't think you will have to do anything except sign your name to the minutes and present them to the Trust Co., Writing them a letter without sending the minutes might only cause delay.

Yours very truly,

THE WASHINGTON STEEL AND BOLT CO.,

(Signed) **H. R. BEESON.**

[Endorsed]: "Petitioner's Exhibit 32." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 32. Received Jan. 5, 1915. F. D. Monckton, Clerk.

**[Petitioner's Exhibit No. 33—Minutes of Meeting
of Board of Trustees of Washington Steel & Bolt
Co., June 29, 1909.]**

Edmonds, Wash.,

June 29, 1909.

TRUSTEE'S MEETING.

Pursuant to due notice given by the Secretary, a

special meeting of the Board of Trustees of the Washington Steel & Bolt Co. was held on the twenty-ninth day of June, 1909, at the office of the company, Edmonds, Wash. Meeting was called to order by the Vice-President, W. R. Ammon, at 10:30 A. M., at which said meeting there were present the following trustees,—viz: W. R. Ammon, A. G. Pike, G. W. Hall, and H. R. Beeson.

Minutes of the previous meeting read, and on motion duly carried, same were approved and adopted.

On motion of A. G. Pike, seconded by H. W. Hall, and duly carried, the following resolutions were unanimously adopted:

BE IT RESOLVED, that the bond trustees, (the Washington Trust Co.), be authorized to pay to parties purchasing bonds of this company the interest accrued on said bonds from the immediately preceeding interest paying date.

BE IT FURTHER RESOLVED that the Washington Trust Co. be instructed to accept the return of all, or any part of the bonds, issued to A. McPhaden on the authority of the Board of Trustees in meeting held April 30th, 1909. And that they be further instructed to return to said A. McPhaden his notes to the amount of bonds returned.

There being no further business to come before the meeting, said meeting, on motion duly made and carried, was adjourned.

A. G. PIKE.

H. R. BEESON.

W. R. AMMON.

H. W. HALL.

10/28/09

Bonds 705-9-10-11-13-15-21-23 amounting to \$8000.00 and note for \$1800.00 covering bonds 704 and 722 received in exchange for \$9000.00 in notes dated May 11, 1909 as per instructions above.

M. E. HOWES.

[Endorsed]: "Petitioner's Exhibit 33." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 33. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 34—Letter November 11, 1909, Washington Steel & Bolt Co. to Washington Trust Co.]

WASHINGTON STEEL & BOLT CO.

EDMONDS, WASH., Nov. 11, 1909.

Washington Trust Co.,

Spokane, Wash.,

Gentlemen;—

We enclose herewith statement of Mr. McPhaden's account as shown by the books of the Company Nov. 1st, 1909. As per Director's meeting of Sept. 1st, 1908, copy of minutes of which you hold in your possession, he desires to partially cover his account with bonds. You now hold his notes for \$4050.00 to cover bonds to the amount of \$4500.00 which you issued to him some time since. Kindly issue the remaining \$1500.00 of bonds (two \$500.00 and five \$100.00 bonds) and send same to Mr. McPhaden c/o this Company at Edmonds, Wash., also return his notes for \$4,050.00.

Thanking you in advance for this favor, we beg to remain,

Yours very truly,

THE WASHINGTON STEEL & BOLT CO.,

(Signed) By H. R. Beeson,

Secy.

[Endorsed]: "Petitioner's Exhibit 34." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 34. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 35—Letter, February 19, '10—Washington Steel & Bolt Co. to Washington Trust Co.]

WASHINGTON STEEL & BOLT CO.

EDMONDS, WASH., Feb. 19th, '10.

Washington Trust Co.,

Spokane, Wash.,

Gentlemen;

We herewith enclose statement of Mr. McPhaden's account as shown by the books of the Company on the 19th of Feb. 1910. As per Directors Meeting of Sept 1st, 1908, copy of minutes of which you hold in your possession, he desires to partially cover his account with bonds.

Kindly issue one \$500.00 and five \$100.00 bonds making a total of One Thousand Dollars, and send same to Mr. McPhaden c/o of this Company at Edmonds, Wash.

Thanking you in advance for this favor, we beg to remain,

Yours very truly,

WASHINGTON STEEL & BOLT CO.,

(Signed) By W. A. KELLY,

Secy.

[Endorsed]: "Petitioner's Exhibit 35." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 35. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 36—Letter, February 19, '10—Washington Steel & Bolt Co. to Washington Trust Co.]

WASHINGTON STEEL & BOLT CO.

Edmonds, Wash., Feb. 19th, '10.

Washington Trust Co.,

Spokane, Wash.,

Gentlemen;

Mr. McPhaden's account today shows a credit of \$2,404.74, as our books will show.

Yours truly,

WASHINGTON STEEL & BOLT CO.,

(Signed) By—————,

Secy.

[Endorsed]: "Petitioner's Exhibit 36." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 36. Received Jan. 5, 1915. F. D. Monckton, Clerk.

**[Petitioner's Exhibit No. 37—Minutes of Meeting
of Board of Directors of Washington Steel & Bolt
Co., March 20, 1911.]**

Edmonds, Wash., March 20th, 1911.

Meeting of the Board of Directors,

Washington Steel & Bolt Co.

Pursuant to notice given March 16th, 1911.

Meeting called to order by Vice President.

The following Directors were present,

W. R. Ammon, H. W. Hall, A. G. Pike,
Minutes previous meeting read and approved.

Motion made by A. G. Pike seconded by R. W. Hall
that \$25,000 of the Company's unsold bonds be placed
with the Bank of Montreal as Collateral on a \$20,-
000.00 loan that this Company owes, and an order be
given the Washington Trust Company to deliver
same to the Bank.

Carried.

Motion made by A. G. Pike to send a Copy of these
minutes to Dr. J. W. Cosford and Austin Ready for
their consideration (they not being present) Sec-
onded by H. W. Hall,

Carried.

There being no further business meeting ad-
journed.

Signed: A. G. Pike, Sec'y & Treasurer.

W. R. Ammon, Vice-President.

H. W. Hall.

J. W. Cosford, President.

Austin Ready.

[Endorsed]: "Petitioners' Exhibit 37." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioners' Exhibit 37. Received Jan. 5, 1915. F. D. Monckton, Clerk.

[Petitioner's Exhibit No. 38—Letter, Apr. 15, 1911, Washington Steel & Bolt Co. to The Washington Trust Co., and Receipt, Apr. 17, 1911, of Bank of Montreal, Spokane, Wash., to Washington Trust Co., etc.]

Seattle, Wash., April 15, 1911.

The Washington Trust Co.,

Spokane, Wash.

Gentlemen:

Please deliver to the Bank of Montreal, \$25,000 of our company's bonds as per instructions in our letter to you of even date, and oblige,

Yours very truly,

WASHINGTON STEEL & BOLT CO.

By A. G. Pike,

Mgr.

Spokane, Wash.,

17th April, 1911.

Received from the Washington Trust Company \$25,000 bonds of the Washington Steel and Bolt Company referred to above.

For the Bank of Montreal, Spokane, Wash.

C. H. G. Phipps,

Manager.

[Endorsed]: "Petitioner's Exhibit 38." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 38. Received Jan. 5, 1915. F. D. Monckton, Clerk.

**[Petitioner's Exhibit No. 39—Receipt, Apr. 19, 1911,
Issued to The Washington Trust Co., etc.]**

Spokane, Wash., April 19, 1911.

Received of The Washington Trust Company bonds in the par value of Twenty-five Thousand (\$25000.00) Dollars issued by the Washington Steel & Bolt Company.

Seventeen (17) bonds each of a par value of One Thousand (\$1000.00) Dollars numbered as follows: 705, 709, 710, 711, 713, 715, 721, 723, 724, 725, 726, 727, 728, 729, 730, 731 and 732, and sixteen (16) bonds each having the par value of Five Hundred (\$500.00) Dollars numbered as follows: 675 to 690 both inclusive.

W-H

[Endorsed]: "Petitioner's Exhibit 39." Dora Beach. No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Petitioner's Exhibit 39. Received Jan. 5, 1915. F. D. Monckton, Clerk.

**[Claimants' Exhibit No. 2—First Mortgage or Deed
of Trust of Washington Steel & Bolt Company
to The Washington Trust Co.]**

133386

FIRST MORTGAGE OR DEED OF TRUST.

Washington Steel & Bolt Company,

to

The Washington Trust Company.

THIS INDENURE, made and entered into this 1st day of September, A. D. 1908, by and between the WASHINGTON STEEL & BOLT COMPANY, a

private corporation organized and existing under and by the laws of the State of Washington, with its principal place of business at Edmonds, County of Snohomish, State of Washington, hereinafter called WASHINGTON STEEL & BOLT COMPANY, party of the first part, and THE WASHINGTON TRUST COMPANY a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Spokane, County of Spokane, State of Washington, hereinafter called the TRUSTEE, party of the second part, WITNESSETH:—

THAT WHEREAS, the objects of said Washington Steel & Bolt Company as stated in its articles of incorporation and by laws and as authorized by the laws of the State of Washington, are as follows, to wit—

The objects and purposes for which this corporation is formed are to purchase, own, hold, manufacture, sell, vend and dispose of the patented inventions, rail joints and improvements and make improvements thereon. To grant the right to manufacture, vend, sell, and use the same in whole or in part, in the whole or in any part of the United States, or any State or any part thereof, for a total sum or upon the payment of a royalty. To build, construct and operate factories and transact a general manufacturing business. To purchase, own, hold real estate and personal property. To build, construct, equip and operate steam and electric railroads, and transact a general common carrier business for hire. To enter into contracts for the building, construct-

ing and operating railroads, manufacturing railroads rails, ties and railroad equipments. To borrow money on the credit of the company, issue bonds and to mortgage, hypothecate or pledge any and all of its property to secure the same. To sign bonds for the faithful performance of its contracts. To contract concerning its lands, mills, factories and articles by it manufactured, including railroad rails, and products of all kinds; to sell and deal in electric power, and do all and every act necessary, expedient or proper or incidental to any business herein enumerated. And the company to purchase, own, hold, manufacture, sell, vend and dispose of the United State Patent #740257 of the Owen-Shaw Nut and Bolt Locks, make improvements therein and thereon. To purchase, own, hold, manufacture, sell, vend and dispose of any other patent or patents in whole or in part, in the whole or in any part of the United States, or in any state or in any part thereof, in any county or any part thereof, for a total sum or on a payment of a royalty. To enter into contracts for the making and manufacturing of any articles or things for which it holds a patent or any part thereof. To enter into contracts for building, constructing and operating railroads, manufacturing railroad joints, safety nut and bolt locks, ties and railroad equipments. To contract concerning its land, mills, factories and articles by it manufactured, owned or dealt in. And,

WHEREAS, the said Washington Steel & Bolt Company being authorized by its articles of incorporation, its by-laws and by the laws of the State of Washington, among other things as above stated

to buy and sell, mortgage and hypothecate real and personal property, erect and maintain buildings and factories with all necessary machinery and implements of every nature or kind, for the purpose of manufacturing railroad joints, safety nut and bolt locks, ties and railroad equipments and all kinds of bolts and articles of that nature, including the manufacturing of rod iron of all kinds, and,

WHEREAS, the said Washington Steel & Bolt Company has now in active operation a factory manufacturing bolts of all kinds, located at Edmonds, Snohomish County, Washington, and,

WHEREAS, its present machinery is insufficient to supply the demands made for its manufactured products, and,

WHEREAS, said Washington Steel & Bolt Company deem it not only to its best interests, but imperative in order to supply the demands of the trade made upon its manufactured product to enlarge its building and plant and by adding new and additional machinery and tools, and to purchase and erect a roller mill for the manufacture of bar and rod iron to erect docks, etc., and,

WHEREAS, in order to enlarge said buildings and add said machinery and purchase and erect said roller mill, and build said docks it will be necessary to obtain additional capital, and,

WHEREAS, the Board of Trustees of said Washington Steel & Bolt Company deeming it advisable and to the best interests of said company, and being fully empowered by the by-laws of said Washington Steel & Bolt Company, and acting pursuant thereto,

at a meeting duly held for that purpose, on the date hereof, has resolved and determined that for the purpose of promoting the larger success of said Washington Steel & Bolt Company, that the borrowing of the sum of Two Hundred Thousand (\$200,000) Dollars was necessary and to the best interests of said company as aforesaid, and that such sum should be borrowed for it in its behalf and name, by its officers and by due action of the Trustees of the Washington Steel & Bolt Company at a meeting called and held according to law, has as aforesaid resolved and determined, as aforesaid, to make and issue its first mortgage coupon bonds of the total issue of Two Hundred Thousand (\$200,000) Dollars divided into Five Hundred (500) Bonds of One Hundred (\$100) Dollars each, Two Hundred (200) bonds of Five Hundred (\$500) Dollars each and Fifty (50) bonds of One Thousand (\$1000) Dollars each, all payable at the office of the TRUSTEE in Spokane, Washington, on the 1st day of September, 1918, in gold coin of the United States of the present standard of weight and fineness, bearing interest at the rate of Eight (8%) per centum per annum from the date of issue or sale thereof, payable semi-annually in like gold coin on the first day of March and September, in each and every year thereafter, until said principal is fully paid, according to the tenor of the coupons thereto annexed, without deduction for any tax or taxes that the Washington Steel & Bolt Company may be required to pay or to retain from said principal or interest, by any present or future laws of the United States of America, or of the State of

Washington; said bonds being numbered consecutively from one (1) to and including the number Seven Hundred and Fifty (750).

Each of said bonds to be duly executed under the seal of the Washington Steel & Bolt Company, signed by its President or Vice-President, and attested by its Secretary or Assistant Secretary, and the interest coupons thereto annexed or belonging, to be authenticated by or with the engraved signature of its Treasurer, nevertheless, with the understanding that Seventy-five Thousand (\$75,000) Dollars of said bonds shall be issued and placed on the market on the execution and delivery of this said Indenture, and the balance of One Hundred and twenty-five Thousand (\$125,000) Dollars of said bonds to be held by the TRUSTEE, and not issued and put on the market only in the event and at such time in the future as the Trustees of said Washington Steel & Bolt Company may deem to be for the best interests of said company, and,

WHEREAS, in order to secure the payment of the principal and interest of all the said bonds equal and ratable, without priority or distinction irrespective of the date of the issue of the same, the said Washington Steel & Bolt Company has by due action of its Board of Trustees, as aforesaid, determined to execute and deliver this mortgage or deed of trust; and has further determined that each of said bonds shall be certified by the Trustee, which certificate shall be conclusive proof that the same is secured by this Indenture, and that each of said bonds, coupons and certificate as approved by said Board of Trustees, are as follows, to wit:—

(FORM OF BOND)

UNITED STATES OF AMERICA,
State of Washington.

#—————

\$—————

WASHINGTON STEELE & BOLT COMPANY
Edmonds, Washington.

First Mortgage Eight Per Cent Gold Bond:—

KNOW ALL MEN BY THESE PRESENTS:
That WASHINGTON STEEL & BOLT COMPANY, a corporation duly organized and existing under the laws of the State of Washington, for value received, acknowledges itself indebted to the bearer of this bond, or if this bond be registered to the registered holder thereof in the sum of One Thousand (\$1,000) Dollars (or Five Hundred (\$500) Dollars or One Hundred (\$100) Dollars as the case may be), which it hereby promises and agrees to pay in United States gold coin of the present standard of weight and fineness, on the first day of September, 1918, at the office of The Washington Trust Company, Trustee, in the City of Spokane, County of Spokane, State of Washington, with interest thereon from the date of issue or sale thereof until paid at the rate of eight (8%) per centum per annum payable semi-annually in like gold coin on the first day of March and September in each year on the presentation and surrender of the coupons annexed hereto, as they severally become due; all payments upon this bond, both of the principal and interest shall be made without deduction for any tax or taxes that said Washington Steel & Bolt Company may be required to pay or to retain therefrom by any present or future laws

of the United States of America, or of the State of Washington, said Washington Steel & Bolt Company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is one of a series of Seven Hundred and Fifty (750) bonds all of the same tenor and date, numbered consecutively from one (1) to and including the number Seven Hundred and Fifty (750). The first Five Hundred (500) bonds being of the denomination of One Hundred (\$100) Dollars each, and Two Hundred (200) bonds being of the denomination of Five Hundred (\$500) Dollars each and Fifty (50) bonds being of the denomination of One Thousand (\$1,000) Dollars each, and all said bonds with the coupons thereto attached, are equally secured by a first mortgage or deed of trust, duly executed and delivered by the said Washington Steel & Bolt Company to THE WASHINGTON TRUST COMPANY in Spokane, County of Spokane, State of Washington, as Trustee, subject to all the provisions and conditions therein, bearing even date with this bond, authorized by said WASHINGTON STEEL & BOLT COMPANY to be issued to an amount not exceeding in the aggregate the principal sum of Two Hundred Thousand (\$200,000) Dollars, nevertheless, with the understanding that Seventy-five Thousand (\$75,000) Dollars of said bonds shall be issued and placed on the market on the execution and delivery of this said Indenture, and the balance of One Hundred and twenty-five Thousand (\$125,000) Dollars of said bonds to be held by the Trustee, and not issued and put on the market only in the event and at such time

in the future as the Trustees of said Washington Steel & Bolt Company may deem to be for the best interests of said company, and covering and conveying all real property and personal property owned by said WASHINGTON STEEL & BOLT COMPANY, and more particularly described in said mortgage, and to which reference is hereby made for the nature and extent of the security and rights of the holders of these bonds, and the terms and conditions thereof, which is duly recorded in the office of the County Auditor of Snohomish County, State of Washington; in case default shall be made and shall continue for six (6) months in the payment of any interest on any of the bonds secured by this Indenture, the principal of the said bonds with all the interest accrued and unpaid thereon, shall become due and payable at the election and upon declaration of the owners of one-third in amount of said bonds, then, outstanding.

This bond may pass by delivery but may be registered as to the number hereof, upon the transfer book of the TRUSTEE at its office, and after such registration duly certified hereon by the TRUSTEE this bond shall be transferred only on said books, unless transfer be to bearer, when it shall again be transferred by delivery subsequent to registration in like manner. This bond shall not become obligatory until it shall have become authenticated by the certificate of the Trustee endorsed hereon.

No recourse shall be had for the payment of the principal or interest of this bond, against any individual incorporator, stockholder, officer or Trustee

of said Washington Steel & Bolt Company, and any and all liabilities of incorporators, stockholders, trustees and officers of the said Washington Steel & Bolt Company individually being hereby released.

IN WITNESS WHEREOF, the said WASHINGTON STEEL & BOLT COMPANY has caused these presents to be signed and executed in its corporate name by its president, and counter-signed by its Secretary, and its corporate seal hereto affixed, and the coupons for interest being authenticated by the engraved signature of its Treasurer to be attached hereto, this 1 day of September, 1908, all pursuant to legal authority in them vested to that end.

WASHINGTON STEEL & BOLT COMPANY.

By A. McPHADEN,
President.

Attest: A. G. PIKE,
Secretary.

Washington Steel and Bolt
Company, Seal Incorporated
1906, Edmonds, Wash.

(FORM OF COUPON)

\$———— Coupon No. 1 \$————

WASHINGTON STEEL & BOLT COMPANY,
Edmonds, Washington, will pay to the bearer on
the first day of ——— at the office of THE WASH-
INGTON TRUST COMPANY in the city of Spo-
kane, County of Spokane, State of Washington,
———— Dollars in gold coin of the United States of

America, being six (6) months interest due on that date, on its first mortgage gold bond.

Bond No. ———

A. G. Pike,
Treasurer.

(FORM OF CERTIFICATE)

IT IS HEREBY CERTIFIED that this bond is one of a series of bonds described in a mortgage or deed of trust therein mentioned, executed by the WASHINGTON STEEL & BOLT COMPANY to the undersigned as Trustee, bearing date the first day of September, 1908.

THE WASHINGTON TRUST COMPANY,
Trustee.

By R. L. Webster,
Secretary.

NOW, THEREFORE, the WASHINGTON STEEL & BOLT COMPANY in consideration of the promises and of the agreements heretofore and hereinafter made, and of the sum of One (1) Dollar received by the WASHINGTON STEEL & BOLT COMPANY from the Trustee herein, at or before the execution and delivery of this instrument, the receipt whereof is hereby acknowledged, and of money or moneys to be hereafter received by said WASHINGTON STEEL & BOLT COMPANY from the first purchasers of the bonds, so authorized to be issued or of so many of them as shall be issued and sold, and in order to secure the payment of the principal and interest of all such bonds to be issued as hereinbefore provided, and outstanding, to an amount not exceeding in the aggregate of the prin-

incipal thereof at their par value of Two Hundred Thousand (\$200,000) Dollars and all charges and compensations of the Trustee hereunder, and all proper and legal expenses incidental to the administration of its trust, or the enforcement of this mortgage, the WASHINGTON STEEL & BOLT COMPANY has granted, bargained, and sold, transferred, assigned, set over, released, conveyed and confirmed and by this Indenture does grant, bargain and sell, transfer, assign and set over, release, convey and confirm unto THE WASHINGTON TRUST COMPANY, in the City of Spokane, County of Spokane, State of Washington, hereinabove stated as TRUSTEE, and to its successor or successors in the trust hereby created, and its assigns forever, all and singular the following described real property, situate, lying and being in the County of Snohomish, State of Washington, and particularly bounded and described as follows, to wit:—

Beginning at the point of intersection of section line between Sections Twenty-three (23) and Twenty-six (26), Township Twenty-seven (27) North, Range Three (3) East of W. M., with the center line of the Great Northern Railroad right of way; thence angle west to South 48 degrees 46 minutes (magnetic course south 40 degrees 56 minutes west), along the center line of the Great Northern right of way, 339.5 feet; thence angle right 46 degrees 17 minutes a distance of 69.18 feet to the true place of beginning. Thence same course 395.8—Thence angle left 64 degrees 25 minutes 290.58 feet; thence angle left 115 degrees 35 minutes 269.72 feet;

thence angle left 46 degrees 17 minutes 362.5 feet to the place of beginning, containing 2.004 acres, also all the abutting tide lands in front of the above described premises amounting to about six (6) acres or about eight (8) acres in all, and any other real estate that may be hereafter acquired by said WASHINGTON STEEL & BOLT COMPANY together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, all buildings, permanent fixtures or mechanical constructions, and all machinery now incorporated into the real estate, or any other building, fixtures or machinery hereafter secured by the said WASHINGTON STEEL & BOLT COMPANY, and placed upon said above-described real estate, or any real estate hereafter acquired by said Washington Steel & Bolt Company, and all riparian or other rights connected therewith. And upon the same considerations, said Washington Steel & Bolt Company hereby sells, transfers and assigns to said TRUSTEE, and its successors in trust, the personal property of said WASHINGTON STEEL & BOLT COMPANY, all being situate in or used with said company's plant and bolt factory or shops and any other buildings now situate, and being upon the above-described land, or hereafter at any time during the life of this mortgage, that may be placed upon said above-described land or premises, and particularly known as the WASHINGTON STEEL & BOLT COMPANY'S factory and plant, to wit:

One *Agax* hot pressed nut machine 16 ton.

One Acme nut tapper 2,

One Acme nut tapper 1.

One Alligator Shear.

One Acme heading and forging machine 1.

One Acme heading and forging machine 2.

One Acme threading machine 2.

One Acme threading machine 1.

One Acme pointing machine.

One 70 h. p. boiler Erie City manufacture.

One 60 H. P. Engine.

\$6000 worth of dies, in die houses on above-described real estate.

One burring machine, water works, hose, electric lights, plant. A complete oil pumping station with heaters, double strainer, together with pipings and Rockwell oil burners for boiler, and also one three ton tumbler. Blacksmithing outfit such as vices, anvils, emery stands, tongs, hammers, drills, punches, etc. All leather endless belting, and any other belting owned and used by said Washington Steel & Bolt Company in and about its said bolt factory. All pulleys owned by said Washington Steel & Bolt Company used in and about said bolt plant, all of the same being of steel material. All roller bearings for shaftings 120 feet or more long. All office furniture and fixtures among other things including desk, filing cabinet, typewriter, steam heating apparatus, situate and being in the office of said company, which said office building is now located upon the above-described real estate.

Two hot blast furnaces. One oil tank, capacity

500 barrels. Platform scales. Also one United States patent known as the Climo Rail Joint Patent #755848, issued on the 29th of March, 1904, together with all rights and privileges thereto connected or in anywise belonging also one United States Patent #740257, known as the Owen-Shaw nut and Bolt Locks, together with all rights and privileges thereto belonging.

IT IS SPECIALLY DECLARED to be the intent and meaning hereof, that this instrument shall embrace and cover all real and personal property, including all lease-hold rights hereafter acquired, and all inventions, patents, patented rights, licenses and franchises of every kind, and any and all other property of every nature, kind, and description now owned or hereafter acquired by the said Washington Steel & Bolt Company, wheresoever situated, nevertheless, provided that the said WASHINGTON STEEL & BOLT COMPANY shall have the right to sell in the usual course of trade the stock and manufactured products of said Washington Steel & Bolt Company, freed from any lien under this mortgage or deed, but in case of foreclosure of this mortgage, any and all remaining unsold at that time shall be subject to the lien and condition of this mortgage.

TO HAVE AND TO HOLD said real property and said personal property hereinabove mentioned or acquired as aforesaid, with all their appurtenances, unto the TRUSTEE, and its successor or successors, forever in trust, nevertheless, under the provisions hereof for the equal pro rata benefit and

security of all and every the person or persons, or corporation or corporations, who or which may be or become holders of any of the said bonds, hereby secured, without any preference or priority of one bond over another or others, by reason of priority in time of the issue or negotiation thereof or otherwise, and for the uses and purposes in this bond expressed, and to secure the payment of principal and interest of all such bonds, or of all those outstanding, at any time during the life of this mortgage or deed of trust; provided, however, that if the said WASHINGTON STEEL & BOLT COMPANY, Mortgagor, shall pay the principal and interest of all such bonds, according to their terms and cause the same to be retired and cancelled, and shall pay the reasonable compensation and lawful charges of the Trustee, all that the TRUSTEE shall do or lawfully cause to be done under this Indenture, either in the discharge of its obligations, or the enforcement of its security, thereupon all the estate and interest of the TRUSTEE and any part of said property and all liens thereon, by reason of this indenture shall cease and the said Washington Steel & Bolt Company shall be entitled to a due satisfaction of record thereof.

The Washington Steel & Bolt Company for itself, its successors and assigns, covenants and agrees to and with the TRUSTEE, and its successors in trust, for the benefit of said holders of said bonds, at the time of ensealing and delivery of this Indenture, that it is the true, lawful and rightful owner of all the said real property and personal property herein-

before described, and it is seized of a good, sure, perfect and indefeasible estate of inheritance, in fee simple in said real estate, and of absolute ownership of said personalty; that it has good right, full powers and lawful authority to mortgage, convey, sell or transfer any and all said property to the TRUSTEE in the manner and form aforesaid; that all said property is free and clear of all taxes, liens or encumbrances whatsoever, and that this instrument is the first mortgage, and carries a valid first lien upon all of said real estate, and all of said personal property; and that said Washington Steel & Bolt Company will ever warrant and defend the same to the TRUSTEE, its successor or successors and assigns for the benefit and behoof, and ratable and equal benefit of all bondholders during the life of this Indenture, against all demands whatsoever; that it will keep the buildings and other improvements on said premises in as good condition as the same are now, and not permit or allow waste upon said premises, and will keep the same free and clear of all taxes, liens or incumbrances which might effect or impair the security of the bond holders, under this Indenture; and that at any time hereafter on demand by the Trustee, it will execute and deliver such further assurances and instruments of title by way of security as shall be necessary to correct any imperfection, which may now exist in the lien created by this Indenture, or to pass by way of security any other acquired title, or interest which the Washington Steel & Bolt Company may hereafter acquire in perfection or en-

hancement of its own present title, or any additional real or personal property, which may hereafter be acquired or constructed by the Washington Steel & Bolt Company, and that such further assurance and such conveyance of such other acquired property shall be for the purpose of affectuating and confirming the clause of this Indenture purporting to operate upon other acquired property, and in order to extend over the same the lien of this Indenture.

IT IS HEREBY MUTUALLY COVENANTED and agreed, by and between the parties hereto, the Washington Steel & Bolt Company covenanting as well for itself as for its successors and assigns, and the TRUSTEE covenanting as well for itself as for its successor or successors in the trust, that the above-described real and personal property, rights and privileges thereto connected, shall be held by the TRUSTEE upon and for the Trusts, uses and purposes heretofore and hereinafter stated, and that the following shall also be terms and conditions under which said bonds are to be issued by said Washington Steel & Bolt Company, as follows, that is to say:

ARTICLE I.

The said Washington Steel & Bolt Company hereby covenants and agrees to pay to the lawful holder of each and every of the bonds, to be issued under and secured by this Indenture, the principal thereof and the interest thereon in accordance with the tenor of said bonds, and of the coupons thereto annexed or belonging thereto, and when and as the same shall respectively become due, and payable

without deduction for any tax or taxes, that it may be required to pay, or to retain from said principal or interest, by any present or future laws of the United States of America or of the State of Washington, and further covenants and agrees to pay all and every the lawful taxes, assessments and charges of every kind, which may at any time be levied, assessed or laid upon the said property of the Washington Steel & Bolt Company, rights and privileges hereby conveyed and every part thereof, when and as necessary to protect the same against the lien of such taxes, assessments and charges, and to do all and everything which may be necessary, advisable or proper to continue and preserve intact, the priority of the lien hereby created, or intended to be created, upon all of the property of every kind and character, rights and privileges hereby conveyed, or intended to be conveyed over every other lien or encumbrance whatsoever, thereon.

The Washington Steel & Bolt Company further covenants and agrees to and does hereby waive the benefit of any extension, stay, appraisement or redemption laws, now existing or that may hereafter exist of the United States of America, or of the State of Washington; and further covenants and agrees at all times diligently to preserve all the rights and privileges now possessed by it, and which may hereafter be granted to or conferred upon it, and at all times to do everything that may be necessary to preserve, maintain or renew its corporate existence and organization, and at all times to preserve and maintain the said Washington

Steel & Bolt Company's property, plant or plants hereby conveyed or hereafter acquired and every part thereof, in good repair, working order and condition, and to supply all necessary machinery, tools, stock equipment, appliances and buildings and from time to time to make all needful and proper repairs, renewals, replacements, useful and proper alterations, additions, betterments and improvements to the end that the value of the security for the bonds to be issued under this Indenture shall never become lessened or impaired.

ARTICLE II.

The WASHINGTON STEEL & BOLT COMPANY so long as it keeps the covenants and agreements contained in this Indenture, and there is no default in the payment of the principal or interest of any of the bonds or coupons secured by this Indenture, shall have the possession, management use and control of all said property hereinabove described or that may be hereafter acquired by it, and receive the rents, incomes and profits thereof, as if this Indenture had not been made.

ARTICLE III.

In case default shall be made in the payment of the interest or any of the bonds issued under this Indenture, according to the tenor of the coupons annexed or belonging thereto, or to pay the taxes assessed upon said property when due, or in the performance of any other act, promise, stipulation, covenant or agreement herein contained to be done, performed or kept by the Washington Steel & Bolt Company, and if such default shall continue as here-

inafter in Article V of this Indenture defined, then in every such case, the TRUSTEE may either personally or by its attorney or agent enter into and upon all and singular the Washington Steel & Bolt Company's property, plant or plants, wharf or wharves, rights and privileges hereby conveyed, and each and every part thereof, and wholly exclude the said Washington Steel & Bolt Company, and its agents therefrom, and have, hold, use and enjoy the same as the Washington Steel & Bolt Company could or might have done if this Indenture had not been made, and operate by its managers, superintendents, receivers or servants or other attorneys or agents, the said Washington Steel & Bolt Company's property, plant or plants, wharf or wharves covered or intended to be covered by this Indenture, and continue the business thereof, and exercise the rights and privileges and authorities pertaining thereto, now enjoyed by said Washington Steel & Bolt Company, and make from time to time all needful repairs, replacements and such useful alterations, additions and improvements thereon, and thereto, as may seem to it necessary or judicious, and collect and repay all tolls, freights, incomes, rents, issues and profits of the same, and of every part thereof; and after deducting the expense of operating the said Washington Steel & Bolt Company's factory, wharf, plant or plants, and of conducting the business thereof, and of all the said repairs, replacements, alterations, additions and improvements and all payments which may have been made for taxes, assessments, charges or liens

prior to the lien of this Indenture upon the said Washington Steel & Bolt Company's factory wharf, plant or plants, or property, or any part thereof, covering or intended to be covered by this Indenture, as well as a just compensation for its own services, the TRUSTEE shall apply the residue of the moneys received as aforesaid to the payment and discharge of the obligations of the said Washington Steel & Bolt Company, in respect to which default shall be made, as aforesaid, or ratably and without preference or priority of one obligation over another. If the residue of the moneys coming into the hands of the TRUSTEE, as aforesaid, shall suffice to discharge the obligations in respect to which such default shall have been made, and if the principal of all the said bonds shall not have become due either by the maturity thereof, according to their tenor, or by the exercise of the election to declare the principal thereof to be due, or if the exercise of such election shall have been revoked and annulled, as hereinafter provided, then the TRUSTEE after the discharge of all such obligations, in respect to which default shall have been made, as aforesaid, shall pay over any surplus moneys that may remain and restore the possession, management and control of all the said factory or factories, wharf or wharves, plant or plants, property, rights and privileges covered or intended to be covered by this Indenture to said Washington Steel & Bolt Company, in the condition in which the same shall then be, subject however, to all the provisions, covenants and conditions of this Indenture which shall

thenceforth have the same force and effect, as if no such default had occurred.

ARTICLE IV.

In case default shall be made by the said Washington Steel & Bolt Company, and shall continue as hereinafter in Article V and in this Indenture defined and provided, the Trustee may after default in the payment of the principal herein or any part thereof, or of the interest as the same becomes due, or the payment of the taxes, legally assessed and due upon the property covered by this Indenture, either before or after entry as aforesaid, personally or by its attorney or agents, sell and dispose of all and singular the factory or factories, wharf or wharves, plant or plants, rights and privileges hereby conveyed, and all the estate, right, title and interest of the said Washington Steel & Bolt Company, in and to the same as an entirety and at public auction to the highest bidder, at such time or place, and upon such notice as may be required by the laws of the State of Washington, in that behalf enacted, or if there be then no laws of said State of binding and controlling force in the premises, in the State of Washington, at such time as it shall appoint, having first given notice of the time and place of such sale by advertisement, published not less than once a week for six (6) successive weeks in one or more newspapers printed or published in Edmonds, Washington, of general circulation in the business communities of said place, and may adjourn the said sale from time to time in its discretion and if so adjourned, make the said sale at the time and place

to which the same may be so adjourned, and make and deliver to the purchaser or purchasers of the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges covered or intended to be covered by this Indenture, a good and sufficient deed or deeds thereof, in fee simple, or other good and sufficient instrument of transfer, which sale, made as aforesaid, shall be a perpetual bar both at law and in equity, against the Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges, or any part thereof or any interest therein, by, from, through or under it; and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorney's and counsel fees, and all other expenses, advances, and liabilities which may have been made, or incurred by it in operating or maintaining the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges, or in managing the business thereof, while in possession, and all payments which may have been made by it of taxes or assessments on the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges, or any part thereof, as well as a reasonable compensation for its own services, the TRUSTEE shall apply the residue of the moneys arising from such sale to the payment of the principal of the bonds, which shall have been issued under this Indenture,

and shall then be outstanding and unpaid, whether the same shall have previously become due or not, and to the payment of the interest which shall at that time have accrued on said principal and be unpaid, without discrimination or preference of principal over the interest or of the interest over the principal, but ratably to the aggregate amount of such unpaid principal and accrued interest, and if after satisfaction thereof, a surplus of the said proceeds shall remain, the TRUSTEE shall pay over the same to the Washington Steel & Bolt Company, or to such other party or parties as may be entitled thereto.

ARTICLE V.

In case default shall be made by the said Washington Steel & Bolt Company in the payment of the semi-annual interest on any of the bonds issued under this Indenture, according to the tenor of the coupons annexed thereto as they severally become due, and if such interest shall remain unpaid or in arrears for a period of six (6) months, and at any time thereafter on demand of payment in writing made at the office of the Washington Steel & Bolt Company in Edmonds, County of Snohomish, State of Washington, by the holder of not less than one-third in amount of the bonds outstanding at the time, or if default shall be made in the payment of any tax lawfully assessed against said property, in respect to any act, promise, stipulation, covenant or agreement herein contained, other than for the payment of the principal and interest of said bonds, on the part of the said Washington Steel &

Bolt Company to be done, kept or performed, and if any such default shall continue for the period of six (6) months after demand for the performance made in writing by the Trustee at the office of the said Washington Steel & Bolt Company in Edmonds, County and State aforesaid, or in case default shall be made in payment of the principal of said bonds, at the maturity thereof, according to their tenor, and so continue in default for a period of six (6) months, or when the same shall have become due by the exercise of the election hereinafter provided for, then and thereupon in every such case it shall be the duty of the TRUSTEE upon a requisition in writing, signed by the holders of not less than one-third in amount of the said bonds, then outstanding, and being furnished as hereinafter provided with adequate security and indemnity against all costs, expenses and liabilities to be by it incurred, to proceed to enforce the rights of the bondholders under this Indenture, either by the exercise of the powers granted by Article III and Article IV of this Indenture, or by suit or suits in equity or at law, in aid of the execution of such powers, or otherwise as the TRUSTEE being advised by counsel shall deem most effectual to enforce such rights, subject, nevertheless, to the powers hereby declared of the majority in amount of the holders of the said bonds that may be then outstanding, in writing, or by a vote at a meeting duly held, to instruct the TRUSTEE to waive any such default; provided, however that no action by the Trustee or by the bondholders waiving default shall extend or be taken

to apply to, or effect any subsequent default, or impair the rights of the Trustee, or of the bondholders, resulting from such subsequent default; it being hereby expressly covenanted, agreed and declared that the right of entry and sale hereinbefore granted are intended to be cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed in any manner whatsoever, to deprive the TRUSTEE or beneficiaries under this Indenture of any legal or equitable remedy by judicial proceedings, consistent with the provisions of this Indenture, and according to the true intent and meaning thereof; provided always, and it is hereby further expressly covenanted, agreed and declared that no holder or holders of any of the bonds secured hereby, shall have the right to institute any suit, action or proceeding in equity or at law, for the foreclosure of this Indenture, or for the execution of the trusts thereof, or for the appointment of a receiver or for any other purpose under this Indenture, without first giving notice in writing to the TRUSTEE of default having occurred and continued, as in this Article prescribed, and requesting the TRUSTEE and affording it a reasonable opportunity to institute such action, suit or proceeding in its own name, or to proceed to exercise the powers hereby granted and also offering to furnish adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared to be conditions precedent to any suit, action or pro-

ceeding by any holder or holders of any of the bonds secured hereby for the foreclosure of, or for the execution of the trusts of this Indenture, or for the appointment of a receiver, or for any other purpose whatsoever under this Indenture.

It is hereby further covenanted, agreed and declared that in case any sale shall be made of the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges, covered or intended to be covered by this Indenture, either by the exercise of the powers granted in this Indenture, or pursuant to or under a decree of judgement of a court of competent jurisdiction, the purchaser or purchasers at such sale shall after first paying in enough to cover the costs and expenses of the foreclosure suit and sale, and any unpaid compensation or charges of the TRUSTEE, and such other charges or expenses of the property pending the foreclosure as the court having jurisdiction of the suit, shall require to be paid in cash, shall have the right and shall be entitled in making settlement for, and in payment of the purchase money, to deliver to the TRUSTEE, or in case of a judicial sale to the person or persons legally appointed and qualified to receive the payment of such purchase money, any of the bonds or coupons secured by this Indenture held by such purchaser or purchasers, and to use and apply the same in or towards the payment of such purchase money, reckoning and computing the said bonds and coupons at a sum equal to and not exceeding that which would be payable out of the net proceeds of

such sale, if made for money to the purchaser or purchasers, as the holder or holders of the said bonds or coupons for his or their just share and proportion, in that character, of such net proceeds upon a due accounting, apportionment and distribution thereof.

It is further understood and agreed that as the coupons annexed to said bonds are paid they shall be cancelled and no purchase of any coupon on any advance or lien thereon or any redemption thereof, by or in behalf of the Washington Steel & Bolt Company after the same shall have been detached from the bonds to which they belong, shall keep such coupon alive or preserve their lien upon the mortgaged property.

It is further understood and agreed that in the event the Washington Steel & Bolt Company shall fail to pay any tax or assessment or other charges herein referred to, or shall suffer any lien to attach by such failure, the TRUSTEE may pay and discharge the same. The Washington Steel & Bolt Company shall repay on demand all moneys paid by the TRUSTEE for taxes, assessments or other charges or any lien on said property, and shall pay said TRUSTEE a reasonable compensation for administering the trust created by this Indenture, which compensation shall be Four Hundred and Fifty (\$450.00) Dollars, for the initial entry or registry of the bonds, and all services connected therewith for the receiving and payment of interest, and shall also pay all charges incurred by the TRUSTEE in connection therewith or enforcement of any of its provisions, or of the rights and securities of the bond-

holders hereunder. If the Washington Steel & Bolt Company shall fail to repay any such moneys so advanced, or to pay the compensation and charges, the same shall be paid by the TRUSTEE out of the proceeds of any sale of the mortgaged property, until then such payment and such compensation and charges shall constitute an additional loan secured by this Indenture, in addition to said bonds, bearing interest at eight (8) per cent per annum, and this Indenture shall create a lien upon all of the property herein described as security therefor.

ARTICLE VI.

It is hereby further covenanted, agreed and declared that the receipt or receipts of the trustee shall be a sufficient discharge to the purchaser or purchasers at any sale made by the Trustee under and in pursuance of the powers granted by this Indenture, for his or their purchase money and that such purchaser or purchasers, his or their heirs, executors or administrators shall not, after payment thereof, and having such receipt or receipts be liable or required to see to the application of such purchase money for or upon the purposes and trusts of this Indenture, or in any manner whatsoever, be answerable for any loss, misapplication or non-application of the same, or any part thereof, or be obliged to inquire into the necessity, expediency or validity of or for any such sale.

ARTICLE VII.

It is hereby covenanted, agreed and declared that at any sale of the property, plant or plants, rights

or privileges hereby conveyed, whether made by virtue of any power herein granted, or by judicial authority, the TRUSTEE upon request of the holders of three-fourths in amount of the said bonds, then outstanding, may bid for and purchase or cause to be bid for and purchased, the same, for and on behalf of all the holders of the bonds hereby secured, and then outstanding, in the proportion of the respective interests of such bondholders, at a price not exceeding the whole amount of such outstanding bonds at the par value thereof, with the interest accrued thereon, and the expenses of such sale.

ARTICLE VIII.

In case default shall be made by the said Washington Steel & Bolt Company in the payment of any installment of interest on any of the bonds hereby secured, when such interest shall become due and payable according to the tenor of the coupons thereto annexed, and if such default shall continue for the period of six (6) months and after demand of payment made as hereinbefore in Article V provided, then and in such case the principal of all the bonds secured by this Indenture and interest, taxes and all other charges shall at the election of the TRUSTEE, evidenced by notice in writing, delivered at the office of the said Washington Steel & Bolt Company in Edmonds, Washington, or at said company's office if moved to any other place, become due and payable, anything in the said bonds or herein contained to the contrary notwithstanding; and a majority in amount of the holders of all the said bonds then outstanding, may, in writing or by a vote at a meet-

ing duly held as herein provided, instruct the TRUSTEE in such case to declare the said principal to be due, or to waive the right so to declare on such terms and conditions as such majority may deem proper, or may annul or reverse the election of the TRUSTEE; provided, however, that no waiver of any default by the Trustee or bondholders shall extend to or be taken to effect any subsequent default or impair the rights resulting from such subsequent default.

ARTICLE IX.

The Trustee shall at all times during the continuance of the trusts hereby created, when required so to do, as hereinafter in this Article provided, release and convey to any party or parties, who may be designated in writing by the said Washington Steel & Bolt Company, to receive such release or conveyance, or release from the lien or operation of this Indenture in such other manner as it, the TRUSTEE, may deem proper, any portion of the lands and property hereby conveyed, covered by this Indenture or intended to be covered by this Indenture, but which shall be unnecessary for use in connection therewith, or which shall be acquired or held for exchanges, depots, storehouses, shops, or other buildings, or for supplies or other material, tools, or machinery, and also shall release, or convey as aforesaid, any lands and property which may become disused by reason of any change in the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, or of the location of said company's plant or property as hereinbefore

stated, connected with said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants as aforesaid, which may be deemed by it expedient to disuse or abandon by reason of such change or otherwise, and shall also, when required as aforesaid, consent to changes in the location of said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, or of any or all of its property hereinabove mentioned, and to exchanges of property and readjustment of boundaries and shall execute and deliver the instruments necessary or proper to carry the same into effect; provided, however, that the releases or conveyances or other consents or instruments to be made by the TRUSTEE under authority of this Article shall be executed or given only upon the written request of the President of the Washington Steel & Bolt Company, showing the reason therefor, accompanied by an affidavit or affidavits of a majority of the Trustees of the said Washington Steel & Bolt Company, stating the facts upon which such request is made, which said request and affidavit shall in all cases be conclusive authority to the Trustee for the execution and delivery of such releases, conveyances, consents or other instruments; and, provided, further that any lands or property which may be acquired for the permanent use in substituting for any lands or property released under the provisions of this Article shall become and be immediately upon acquisition of the same, subject to the terms of this Indenture.

The Washington Steel & Bolt Company shall be

at liberty from time to time to dispose of, according to its discretion, such portion of the machinery, tools, implements, appliances and equipments, which shall be at any time acquired or held for the use of the said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants or other property hereby conveyed, as shall have become unfit or unnecessary for such use by any and all new or other machinery, tools, implements, appliances, and equipments, which may be acquired, in substitution, for any so disposed of, shall by virtue and force of this Indenture become and be immediately upon the acquisition of the same, subject to the lien and operation of this Indenture, without any new conveyance or transfer or other act or proceeding whatsoever.

The Washington Steel & Bolt Company shall be at liberty to use any and all moneys or securities, which it may receive for or upon any sale, lease or other disposition of any lands and property made under the provisions of this Article, for the purchase or acquisition of other property, or for the improvements of said Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges hereby conveyed; provided, that such purchase or acquisition shall be so made that the property so purchased or acquired shall come under and be subject to this Indenture as a first lien thereon; and in case and to the extent that the moneys or securities so received by the said Washington Steel & Bolt Company shall not be so used for the purchase or acquisition of

other property, or for the improvements of the factory or factories, wharf or wharves, plant or plants, and property hereby conveyed, the Washington Steel & Bolt Company shall pay over, assign and transfer the same to the TRUSTEE upon its request, for and upon the purposes and trusts expressed and declared in this Indenture, or intended to be expressed or declared, and the moneys so received by the Trustee shall be held by it on interest to be paid and accumulated as capital annually or semi-annually as said trustee may think to the best interests of said Washington Steel & Bolt Company, and such moneys together with all accumulations of interest shall be invested by the Trustee in the bonds hereby secured, by the purchase thereof in the open market from time to time, provided the same can be purchased at a price, which shall be satisfactory to the Washington Steel & Bolt Company, but in case the said bonds cannot be so purchased, then such moneys, together with all the accumulations of interest thereon shall be invested by the Trustee in other mortgage bonds of municipal corporations, to be approved by the Washington Steel & Bolt Company, which said other mortgage bonds shall be held by the Trustee as additional security for the bonds to be issued under this Indenture, and if any of the said bonds so held shall be paid or redeemed, the proceeds shall be reinvested in a similar manner and all interest that shall mature and be paid upon said bonds so held, shall be applied from time to time towards the payment of the interest to mature on the bonds to be issued under this Indenture, or paid

to the Washington Steel & Bolt Company for that purpose so long as there shall be no default by the said Washington Steel & Bolt Company in any of its covenants in this Indenture contained.

And, provided, further that the Trustee shall be at liberty from time to time in its discretion to change its investment in any of the said bonds, other than the bonds secured herein, or to convert the same and any other securities, which may be received from the Washington Steel & Bolt Company as in this Article provided, into cash and to apply said cash so realized from time to time to the purchase of the bonds secured by this Indenture, whenever and to the extent that the same can be acquired upon terms satisfactory to the TRUSTEE and to the said WASHINGTON STEEL & BOLT COMPANY, as aforesaid.

ARTICLE X.

IT IS FURTHER MUTUALLY COVENANTED, AGREED and DECLARED that the said bonds shall pass either by delivery or by transfer on the books of the Trustee in the city of Spokane, Washington, and on the books of any financial agent, which may hereafter be appointed at any other place or places in the United States or Europe by the TRUSTEE herein and the Trustees of the Washington Steel & Bolt Company, if in their judgement such appointment would be to the best interests of the bondholders hereunder, and the Washington Steel & Bolt Company further covenants and agrees that it will at all times hereafter, as long as any of the said bonds shall remain

outstanding keep a transfer office in the City of Spokane, Washington, and at such other places in the United States or in Europe, as it may hereafter appoint with the approval of the Trustee, at which office or offices a book or books shall be kept to be designated as "The Register of Bonds Issued under the First Mortgage or Deed of Trust of the Washington Steel & Bolt Company." The said bonds may be registered in the name or names of the owner thereof, or their appointees on the books of the TRUSTEE in the City of Spokane, Washington, or at such other places as it may determine as aforesaid, and such registration shall be certified on the said bonds by the Trustee, or the transfer agent of the Washington Steel & Bolt Company, and thereafter no further transfer of said bonds shall be valid, unless made on said book or books of registry thereof by the registered owner in person, or by an attorney, duly authorized and similarly certified on the said bonds; but the said bonds when so registered may be discharged from such registration by being transferred to bearer on the said book, and thereafter they shall be transferable by delivery as before registration; and the said bonds shall continue subject to successive registration, registered and transferred to bearer at the option of each holder, provided the coupon belonging thereto shall be presented with the said bonds at the time, when such registration shall be requested, and not otherwise.

ARTICLE XI.

It is further mutually covenanted and agreed that the Washington Steel & Bolt Company shall be liable

in *personam* for the bonds to be issued under this Indenture and the interest thereon, and for the indebtedness evidenced thereby, and that any deficit after exhausting the securities of the Washington Steel & Bolt Company's plant or plants, property and rights hereby conveyed, may be enforced against said Washington Steel & Bolt Company and all its other property; but that the stockholders of the Washington Steel & Bolt Company shall not in any way be personally liable in respect to the said bonds and coupons, or in respect to the indebtedness evidenced thereby.

ARTICLE XII.

It is further mutually covenanted and agreed that the word "trustee" when and as used in this Indenture is for all the purposes thereof intended to refer to and describe and shall be construed to mean the person or persons, corporation or corporations who or which, for the time being, shall be charged with the execution of the trusts of this Indenture, whether the same may be the party of the second part or any successor or successors or appointee in the trusts.

The Trustee may resign and be discharged from the trusts hereby created by giving notice in writing to the Washington Steel & Bolt Company, not less than one month before such resignation shall take effect or upon such shorter notice as the Washington Steel & Bolt Company shall accept as adequate; and the Trustee may be removed by the holders of not less than two-thirds of all the said bonds hereby secured and then outstanding, by an instrument or

instruments, in writing, under their hands and seals, or by vote at a meeting as aforesaid; and until an appointment shall have been so made by the bondholders, the president of the Washington Steel & Bolt Company with the written approval and consent of the holders of not less than one-sixth in amount of the said bonds, then outstanding, may appoint a Trustee to fill such vacancy for the time being; and in case of an appointment by a majority in interest of the bondholders, as aforesaid, and in all other cases where a change shall be made in the Trustee, the successor Trustee shall thereupon become and be vested with all the powers, authorities, estates, rights, titles, and interests granted or conveyed to, or conferred upon the party of the second part of this Indenture, and all the rights, powers, authorities and interests requisite to enable such successor trustee to execute and perform and fulfill the powers, duties and purposes of the trusts hereby created, by force of this Indenture without any further assurance or conveyance so far as such effect may be lawful; nevertheless, the Trustee resigning or removing, shall immediately execute all such conveyances or assurances and other instruments as may be satisfactory and expedient for the purpose of assuring the legal estate in the premises to the successor so appointed.

In case of a vacancy being temporarily filled by the appointment by the president of the Washington Steel & Bolt Company, under the foregoing provisions in that behalf it shall be competent for any court of equitable powers, having jurisdiction in the

premises, upon application of the holders of not less than one-tenth of the amount of the said bonds then outstanding at the time, upon due notice to the Washington Steel & Bolt Company, and for cause to be shown to annul such appointment and to appoint such trustee in the place of the Trustee so temporarily appointed, to hold the trusts for the term during which the Trustee so removed would have held the same, by virtue of the appointment by the President and no longer.

It is further mutually covenanted, agreed and declared that whenever and as often as any contingency shall arise, in which a meeting of the bondholders shall be necessary or expedient, it shall be the duty of the Trustee or the President of the Washington Steel & Bolt Company on the written request of not less than one-sixth in amount of the said bonds, then outstanding, and stating therein the purpose thereof to call a meeting of the holders of all the then outstanding bonds, to be held in the City of Spokane, Washington, by advertisement to be published daily at least for two successive weeks, in two newspapers printed and published in said city, and of good circulation in the business communities; and in default of such meeting being called by the Trustee or by the President of the Washington Steel & Bolt Company within thirty (30) days, after request, as aforesaid, it shall be competent for the holders of not less than one-sixth in amount of the said bonds, then outstanding, to call such meeting in the manner aforesaid; and any meeting called as herein provided the bondholders shall be competent to exercise in

person or by proxy all the powers and authorities conferred upon them by this Indenture; provided however, that the holders of a majority in interest of the outstanding bonds, in person or by proxy, shall be required to constitute a quorum at any such meeting and that any such vote of such meeting affecting or intended to affect any person or corporation including the parties hereto or their successors, may by such person or corporation be required to be authenticated under the hands and seals of the persons so voting.

Any declaration, request or appointment herein proved to be made by the owners of the bonds secured by this Indenture, shall be by written instrument signed by the owner or his attorney duly authorized thereto, and proved by the certificate of notary public or other officer authorized to take acknowledgment of deeds; that each person signing the same, acknowledged the execution thereof and made oath before him of the ownership of the bonds by the person claiming to own the same. Every power under which an attorney shall sign any such instrument must be proved by like certificate as to the execution and must be filed with the instrument so signed. With respect to every declaration and request, the Trustee may require any person claiming to be a holder to produce his bonds and file them with the Trustee or give other evidence satisfactory of ownership to it.

Every new Trustee however appointed must be a Trust Company. And any such new Trustee shall immediately after appointment by virtue thereof be

vested in all the estate and have all rights, powers and discretion conferred by this Indenture or the trusts herein named.

ARTICLE XIII.

It is further understood and agreed that if the said Washington Steel & Bolt Company shall well and truly pay the indebtedness represented by the bonds to be issued under this Indenture, together with interest thereon, according to the tenor of the said bonds and of the coupons annexed thereto, and shall well and truly keep, perform, and observe all the covenants and agreements in this Indenture provided to be kept, performed and observed by it, according to the true intent and meaning thereof, then in that case the estate, right, title and interest of the Trustee and of its successor or successors in the trusts hereby created, in and to all of the Washington Steel & Bolt Company's factory or factories, wharf or wharves, plant or plants, property, rights and privileges hereby created and conveyed, shall cease and determine and this Indenture shall become void, otherwise the same shall be and remain in full force and virtue; and whenever the said bonds hereby secured shall have been fully paid, principal and interest and all the obligations of the Washington Steel & Bolt Company hereunder shall have been fulfilled, this Indenture shall be discharged by the Trustee or its successor or successors, by proper instrument or instruments, under seal duly executed and acknowledged.

ARTICLE XIV.

The said Washington Steel & Bolt Company

hereby further covenants and agrees to keep the property hereby conveyed at all times during the life of this Indenture, insured in some good responsible insurance company or companies in reasonable amount or amounts, satisfactory to the Trustee to whom the loss, if any, shall be made payable by the terms of the policy or policies. The Trustee shall apply all moneys received from loss by fire, if any, to pay pro rata all outstanding bonds or at its option to rebuild or replace the property insured or destroyed.

ARTICLE XV.

The Trustee shall certify and deliver on the order of the President of the Board of Trustees of the Washington Steel & Bolt Company any number of the bonds issued hereunder to the limit of the authorized issue.

ARTICLE XVI.

Upon payment of the principal and interest of all the bonds issued and outstanding secured hereby, according to their terms and of the reasonable compensation and lawful charges of the Trustee, said Trustee shall on demand execute and deliver any instrument or instruments which may be necessary or proper to secure the cancellation of this Indenture, and the discharge thereof of record. The provisions of this Indenture shall bind and benefit the successors and assigns of the Washington Steel & Bolt Company and the successors of the Trustee in the trust hereby created, and shall operate to secure and benefit at all times the then holders of all the outstanding bonds to be issued.

ARTICLE XVII.

THE WASHINGTON TRUST COMPANY, Trustee, party of the second part for itself and its successors hereby accepts the trust created and assumes the duties imposed by this Indenture upon and only upon the terms and conditions following, that is to say:

1. The Trustee may select and employ in and about the trusts and duties hereby created and imposed, suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Washington Steel & Bolt Company, when necessary and proper so to do, and in default of such payment, the same shall be a charge upon the mortgaged property and its proceeds paramount to said bonds and the Trustee shall not be liable for any neglect, omission or wrong-doing of any such agent or attorney's reasonable care being exercised in their selection; nor shall it be otherwise answerable save for its own willful neglect and default.

2. The Trustee shall not be bound to take any action under this Indenture unless thereto requested in writing, as hereinbefore specifically provided, and unless such request be accompanied by satisfactory indemnity against all costs, expenses and liabilities incidental to the action requested.

3. The Trustee shall not be bound to recognize any one as a holder of said bonds, nor to take any action at his request, unless the bonds so claimed to be held shall be submitted to the Trustee for inspection, and if ownership thereof be questioned,

until the title thereto has been satisfactorily established.

4. The Trustee shall not be bound to take any action for the proper recording of this instrument as a chattel mortgage or mortgage of real estate, or for perfecting or perpetuating or keeping good the lien of this Indenture upon any portion of the property, rights and privileges hereby conveyed, but the Washington Steel & Bolt Company its successors and assigns shall from time to time do all things needful in that behalf.

5. It shall be no part of the duty of the Trustee to effect insurance against fire or other damage on any portion of the property covered by this Indenture, or to renew any policy of insurance, or to keep itself informed or advised as to payment of any tax or assessment or to require such payment to be made, but the Trustee may in its discretion, after notice and refusal or neglect of said Washington Steel & Bolt Company so to do, do any or all of the matters and things in this Article set forth, or require the same to be done. It shall only be responsible for reasonable diligence in the performance of its trusts.

6. The Trustee shall be entitled to a reasonable compensation— for its services and to reimbursement for all expenses, properly incurred under this Indenture, including the expenses of the proper prosecution or defense of any suit or proceeding instituted by or against it; and such compensation and expense shall constitute a first charge upon all the property, rights and privileges hereby conveyed,

and upon any fund which may come to the hands of the Trustee under this Indenture.

7. In case at any time it shall be necessary and proper in the judgement of the Trustee for it to make any investigation respecting any fact or facts preparatory to taking or not taking any action, or doing or not doing anything as such Trustee, the certificate of the Washington Steel & Bolt Company under its corporate seal, attested by the signature of its Secretary and affidavit of one or more Trustees, shall be conclusive evidence of such fact or facts to protect the Trustee in any action that it may take by reason of the supposed existence of such fact; but this provisions shall not apply to any case in which any other provision is herein contained as to such evidence.

8. All recitals, statements of facts and representation herein contained are made on behalf of the Washington Steel & Bolt Company and the Trustee assumes no responsibility as to the correctness of the same; nor is the Trustee to be understood as making any representation as to character, extent or value of the mortgaged property, or as to the title thereto.

ARTICLE XVIII.

It is also mutually understood and agreed that the Articles of Incorporation and by-laws of the Washington Steel & Bolt Company, or either of them may at any time during the life of this Indenture, when it appears to the best interests of said Washington Steel & Bolt Company, be amended by making changes therein, adding to or taking away as may

be by them considered to the best interests of all the parties interested therein, as aforesaid, which change or amendment if made, shall in no way effect the lien or validity of this Indenture, provided, nevertheless, that said articles of incorporation or by-laws shall not be changed or amended in any particular, whereby said change or amendment shall lessen or tend to lessen the security, rights or privileges of any person or persons or corporation owning and holding bonds secured or intended to be secured under and by this Indenture, or that will in any way lessen the rights and privileges of the Washington Steel & Bolt Company, or the Trustee under this agreement.

ARTICLE XIX.

It is also mutually understood and agreed that as a further condition running with this Indenture that any bond or bonds issued under or secured by this Indenture shall not be sold or disposed of directly or indirectly at a greater discount than five (5%) per cent thereof, that is to say, said bond or bonds shall not be sold or disposed of for less than ninety-five (95) cents on the dollar, of the par or face value of said bonds.

IN WITNESS WHEREOF, the WASHINGTON STEEL & BOLT COMPANY has caused this Indenture to be signed in its corporate name, by its President or Vice-president, and its corporate seal affixed hereto, and attested by its Secretary or Assistant Secretary; and the said WASHINGTON TRUST COMPANY, Trustee, to evidence its acceptance of the trusts hereby created has caused

this Indenture to be signed in its corporate name, by its President or Vice-president and its corporate seal to be hereto affixed and attested by its Secretary or Assistant Secretary the day and year in this Indenture first above written.

WASHINGTON STEEL & BOLT COMPANY,

By A. McPHADEN,
President.

Attest: A. G. PIKE,
Secretary.

Washington Steel and Bolt Company, Seal. Incorporated 1906, Edmonds, Wash.

THE WASHINGTON TRUST COMPANY,

By J. GRIER LONG,
Vice President.

Attest: R. L. WEBSTER,
Secretary.

The Washington Trust Co., Incorporated 1902, Spokane, Wash.

State of Washington,
County of Spokane,—ss.

On this 1st day of September A. D. 1908, before me personally appeared Alexander McPhaden to me known to be the President and A. G. Pike to me known to be the Secretary of the WASHINGTON STEEL & BOLT COMPANY, the corporation that executed the within and foregoing instrument and on oath acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and

on oath, each for himself and not one for the other, stated that he was authorized to execute said instrument and the seal affixed is the seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in this certificate first above written.

S. F. STREET,
Notary Public in and for the State of Washington,
residing at Edmonds, Washington.

S. F. Street, N. P. Seal. Com. Exp. Nov. 19, 1911.
State of Washington,
County of Spokane,—ss.

ALEXANDER McPHADEN and A. G. PIKE, each being duly sworn on oath depose and say: That they are respectively the President and Secretary of the WASHINGTON STEEL & BOLT COMPANY, a corporation that executed the foregoing instrument; that they signed and executed the same on behalf of the Washington Steel & Bolt Company, by authority of the Board of Trustees thereof, and they make this affidavit in behalf of said Washington Steel & Bolt Company, because it is a corporation and they personally acknowledge the facts; that said instrument as a mortgage of personal property, was made in good faith and without any design to hinder, delay, or defraud creditors.

A. McPHADEN.

A. G. PIKE.

Subscribed and sworn to before me this 1st day of September, A. D. 1908.

S. F. STREET,
Notary Public in and for the State of Washington,
residing at Edmonds, Washington.

S. F. Street, N. P. Seal.

Com. Exp. Nov. 19, 1911.

STATE OF WASHINGTON,
COUNTY OF SPOKANE,—ss.

On this 9th day of September, 1908, before me personally appeared J. Grier Long, Vice-president and R. L. Webster, Secretary of THE WASHINGTON TRUST COMPANY of Spokane, Washington, the corporation that executed, as Trustee, the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

FRANK J. GUSE,
Notary Public, in and for the State of Washington,
Residing at Spokane, Washington.

Frank J. Guse, N. P. Seal. Com. Exp. April 17,
1911.

Filed for record at request of The Washington Trust Co. Sep. 16, 1908, at 11:15 A. M.

S. VESTAL,
County Auditor.
By L. M. Noland,
Deputy.

Vol. 69 M. P. 388.

State of Washington,
County of Snohomish,—ss.

I, P. T. LEE, Auditor of Snohomish County, State of Washington, and ex-officio Recorder of Deeds in and for said County do hereby CERTIFY the above and foregoing to be a true and correct transcript of a mortgage or Deed of Trust from the WASHINGTON STEEL & BOLT COMPANY to the WASHINGTON TRUST CO. now of record in this office in volume 69 of Mortgages, page 338, and also duly filed and Indexed as a Chattel Mortgage under file number 133,386, Records of said Snohomish County, Wash.

Witness my hand and Official Seal this 11th day of March, A. D. 1913.

[Seal] P. T. LEE,
County Auditor and Ex-officio Recorder of Deeds in
and for said County.

By John Haugen,
Deputy.

No. 17. 133,386. First Mortgage or Deed of Trust of Washington Steel & Bolt Company to The Washington Trust Co. Office of County Auditor, County of Snohomish, State of Washington,—ss. Filed for record at request of The Washington Trust

Co. on Sep. 16, 1908, at 15 min. past 11 o'clock A. M., and recorded in Vol. 69, Mortgages, page 388, Records of said County. S. Vestal, County Auditor. By A. J. Wolfe, Deputy. Rec. and File, 20.00. 2357

2357

Filed in the United States District Court, Western District of Washington. Jul. 9, 1913. Frank L. Crosby, Clerk.

[Endorsed]: No. 2512. U. S. Circuit Court of Appeals for the Ninth Circuit. Claimants Exhibit 2. Received Jan. 5, 1915. F. D. Monckton, Clerk.